SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 526

EBBA PAGEL, ANNIE COREY, CLARA HALLBOM, AND CHARLES HALLBOM, PETITIONERS,

vs.

EDWARD PAGEL, AS ADMINISTRATOR OF THE ESTATE OF JACOB E. HALLBOM, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

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IN SUPREME COURT OF MINNESOTA

1933

STATE OF MINNESOTA,
County of Hennepin:

DISTRICT COURT, FOURTH JUDICIAL DISTRICT

In re Estate of JACOB E. HALLBOM, Decedent; SELMA HALLBOM, Appellant

And Now Entitled in the Supreme Court

EDWARD A. PAGEL, as Administrator of the Estate of JACOB E. HALLBOM, Decedent, Petitioner,

vs.

JOHN G. MACLEAN, Administrator of the Estate of Selma Hallbom

IN DISTRICT COURT OF KANDIYOHI COUNTY

ORDER MAKING EBBA PAGEL ET AL. PARTIES TO ACTION

The above entitled matter having come on for hearing before the undersigned, one of the judges of the District Court of Kandiyohi County, Minnesota, at Litchfield, Minnesota, on the 29th day of June, 1931, at two o'clock P. M., upon an order to show cause why Ebba Pagel, neé Hallbom, Annie Corey, neé Hallbom, Clara Hallbom, and Charles Hallbom, should not be made parties in the above entitled [fol. 2] cause and proceeding; not on the petition of L. J. Van Fossen, one of the attorneys for John G. MacLear, administrator of the estate of Selma Hallbom, deceased, and on motion of L. J. Van Fossen, one of the attorneys for said administrator, and the Ebba Pagel and Anna Corey appearing in person and Anna Corey appearing for Charles Hallbom and Clara Hallbom did not appear, and it appearing to the court that Ebba Pagel, neé Hallbom, Annie Corey, neé Hallbom, Clara Hallbom and Charles Hallbom,, should be made parties in this cause and proceedings.

It is ordered, that Ebba Pagel, neé Hallbom, Annie Corey, neé Hallbom, Clara Hallbom, and Charles Hallbom,

be, and they are hereby made parties to this action and it is further ordered that said parties be, and they are hereby given twenty (20) days from the date hereof to file a cross bill setting any claim which they may deem they have to the insurance fund involved in these proceedings.

Dated at Litchfield, Minnesota, this 29th day of June, 1931.

By the Court:

Harold Baker, Judge.

IN DISTRICT COURT OF KANDIYOHI COUNTY

CROSS-BILL AND INTERPLEADER

Now comes Ebba Pagel, Annie Corey, Clara Hallbom and Charles Hallbom, and for their cross bill and interpleader herein, set forth the following facts:

[fol. 3]

1

That they are the surviving children of Selma Hallbom, decedent, and that said Selma Hallbom died on the 7th day of August, 1930, at town of Harrison, Kandiyohi County, Minnesota, and that they are the only living children surviving said Selma Hallbom.

2

That the said Selma Hallbom upon her death also left a last will and testament wherein Ebba Pagel, Annie Corey, Clara Hallbom and Charles Hallbom were named as devisees, and also one Selma Gabrielson, of Atwater, Minnesota, a grand-daughter, was also named as devisee, and that Edward A. Pagel is named as executor of said will, and that John G. MacLean is special administrator of said estate.

3

That on the 29th day of June an order was made by the Hon. Harold Baker, judge of the District Court, for the Twelfth Judicial District, including the county of Kandiyohi, State of Minnesota; that Ebba Pagel, Annie Corey, Charles Hallbom and Clara Hallbom, be made parties to the above entitled proceeding and were given twenty days within which to file a cross bill setting forth any claim which

they might deem they had to the insurance fund involved in the above entitled proceeding.

[fol. 4]

4

That Peter Hallbom, the beneficiary named in the insurance policy involved in the above entitled proceeding, died prior to the death of Selma Hallbom who was the surviving wife of said Peter Hallbom, decedent, and that the parties now entitled to the money under said insurance policy as successors to Selma Hallbom in said proceeding are the only surviving and living children of said Selma Hallbom, decedent.

5

That said Ebba Pagel, Annie Corey, Clara Hallbom and Charles Hallbom, as the surviving living children of said Selma Hallbom, decedent, do hereby claim their rights to said insurance fund involved in the above entitled proceeding and ask that the same be paid to them as the surviving living children of said Selma Hallbom, decedent, as provided by law. That the moneys in this proceeding are now held by Edward A. Pagel, as administrator of the estate of Jacob Hallbom, decedent.

Wherefore they hereby ask for an order of this court directing that said money be paid to them as the surviving living children of said Selma Hallbom, decedent.

Dated July 13th, 1931.

Charles Johnson, Attorney for Ebba Pagel, Annie Corey, Clara Hallbom, and Charles Hallbom.

[fol. 5] *Duly sworn to by Ebba Pag* *Jurat omitted in printing.*

IN DISTRICT COURT OF KANDIYOHI COUNTY

AMENDED CROSS-BILL AND INTERPLEADER

Comes now Ebba Pagel, Annie Corey, Clara Hallbom and Charles Hallbom, and for their amended cross bill and interpleader, set forth the following facts:

1

That they are all of the surviving and living brothers and sisters of Jacob E. Hallbom, decedent above named, and

[fol. 6] that said Jacob E. Hallbom died on the 20th day of October, 1925, in the county of Kandiyohi, Minnesota.

2

That on the 29th day of June, 1931, an order was made by the Hon. Harold Baker, judge of the District Court for the Twelfth Judicial District, Minnesota; that the interpleaders herein be made parties to the above entitled proceeding and were given twenty days within which to file their claim to the insurance fund involved in said proceeding.

3

That Peter Hallbom, the beneficiary named in the insurance policy involved in this proceeding, died on the 22nd day of February, 1928, and that Selma Hallbom, the surviving spouse of said Peter Hallbom, died on the 7th day of August, 1930, and that the said Peter Hallbom and Selma Hallbom were the father and mother of said Jacob E. Hallbom, and the father and mother of these interpleaders, and that these interpleaders are the sole surviving living children of the said Selma Hallbom and Peter Hallbom.

4

That these interpleaders, Ebba Pagel, Annie Corey, Clara Hallbom and Charles Hallbom, are the persons entitled to said insurance fund, and do hereby claim their right to such fund, and ask that the same be paid to them as the sole surviving living brothers and sisters of the said [fol. 7] Jacob E. Hallbom, and as the successors of the said Peter Hallbom and Selma Hallbom.

Wherefore interpleaders pray the judgment and decree of this court directing that the fund involved in this proceeding to be paid to them as the surviving living heirs-at-law of said Jacob E. Hallbom, and as the surviving successors of said Peter Hallbom and Selma Hallbom, decedents.

Geo. L. Barnard, Attorney for Ebba Pagel, Annie Corey, Clara Hallbom, and Charles Hallbom, Formerly Represented by Charles Johnson, Deceased.

IN DISTRICT COURT OF KANDIYOHI COUNTY

ANSWER OF EDWARD A. PAGEL TO CROSS-BILL AND INTERPLEADER

Now comes Edward A. Pagel, as administrator of the estate of Jacob E. Hallbom, decedent, and for his answer to the above entitled cross bill and interpleader:

1. Admits paragraphs 1, 2 and 3 of said cross bill and interpleader.

2. Said Edward A. Pagel denies that petitioners Ebba Pagel, Annie Corey, Clara Hallbom and Charles Hallbom have any right or interest in said insurance fund as surviving, living children of Selma Hallbom, decedent; denies that said petitioners, or any of them, have any right to said insurance fund as an insurance fund, alleges that they have no other right therein, if any, than as heirs-at-law or de-
[fol. 8] visees of Selma Hallbom and Peter Hallbom, *decedents.*

Wherefore Edward A. Pagel, as administrator of the estate of Jacob E. Hallbom, decedent, asks for an order of this court directing that said money be paid and distributed as proposed in his final account as such administrator.

Dated August 3, 1931.

Chas. A. Swenson, Attorney for Edward A. Pagel, Administrator of the Estate of Jacob E. Hallbom, Decedent.

IN DISTRICT COURT OF KANDIYOHI COUNTY

ANSWER OF JOHN G. MACLEAN TO CROSS-BILL AND INTERPLEADER

Now comes John G. MacLean, as administrator of the estate of Selma Hallbom, and for his answer to the above entitled cross bill and interpleader:

I

Admits paragraphs one, two and three of said cross bill and interpleader.

II

Said John G. MacLean denies that petitioners Ebba Pagel, Annie Corey, Clara Hallbom and Charles Hallbom,

have any right or interest in said insurance fund as surviving, living children of Selma Hallbom, deceased, and [fol. 9] denies that said petitioners or any of them have any right to said insurance fund as an insurance fund and alleges that they have no other right therein, if any, than as heirs at law of Selma Hallbom, or as devisees under the will of Selma Hallbom, deceased.

III

Said John G. MacLean further alleges that the said insurance fund was the property of said Selma Hallbom prior to her death and ever since said time said insurance fund has been and now is the property of said John G. MacLean, as administrator of the estate of said Selma Hallbom, deceased.

IV

Said John G. MacLean admits that the moneys collected from said insurance fund are now held by Edward A. Pagel, administrator, as in said cross bill alleged.

Wherefore John G. MacLean, as administrator of the estate of Selma Hallbom, deceased, asks an order of this court directing that said money be paid to him as the administrator of the estate of Selma Hallbom, deceased, to be thereafter distributed as by this court directed.

Dated July 22, 1931.

Orin Oulman, Van Fossen & Van Fossen, Attorneys for John G. MacLean, Admr.

[fol. 10] *Duly sworn to by John G. MacLean. Jurat omitted in printing.*

IN DISTRICT COURT OF KANDIYOHI COUNTY

COMPLAINT IN INTERVENTION

Arlene Alinder and Lillian Gabrielson, for their complaint in intervention in the above entitled action, allege and show to this court:

1

That the plaintiffs in intervention, together with Harlan Gabrielson, Alice Gabrielson and Selma Gabrielson, minors,

are the surviving children of one Rosie Gabrielson, a de-
[fol. 11] ceased sister of the above named Jacob E. Hallbom, decedent, and are heirs at law of Peter J. Hallbom, who was a claimant against the estate of said Jacob E. Hallbom, decedent.

2

That said Jacob E. Hallbom died on the 20th day of October, 1925, and at the time of his death left a war risk insurance certificate in the sum of $10,000.00, payable in case of his death, to his father, Peter J. Hallbom.

3

That thereafter the War Veterans' Bureau paid monthly installments, of $57.50 each, on said certificate to the said father until his death which occurred on the 22nd day of February, 1928.

4

That thereafter, on the 22nd day of June, 1928, the United States Veterans' Bureau paid to the estate of said Jacob E. Hallbom, by remittance to the above named Edward A. Pagel, as administrator of the said estate, the commuted value of said insurance certificate amounting to the sum of $9,116.00, which sum the administrator in his final account, proposed to apply and distribute as assets of said estate, which final account was approved by the Probate Court having jurisdiction.

5

That thereupon the guardian of the above named Selma
[fol. 12] Hallbom appealed from the order of the Probate Court allowing said final account and after successive appeals the case is now remanded to the District Court of Kandiyohi county, Minnesota.

6

That the intervenors have such an interest in the matter in litigation between the other parties to the above entitled action, that they may either gain or lose by the direct legal effect of the judgment therein, in this, to-wit:

a. That said plaintiffs in intervention, and their minor brother and sisters, are heirs at law of the estate of Peter

Hallbom, decedent, the surviving father of said Jacob E. Hallbom, decedent; that the said Peter Hallbom was a claimant against the estate of his son, Jacob E. Hallbom, decedent, and his said claims were allowed by the Probate Court against said estate in the aggregate sum of $1,213.76 on the 22nd day of June, 1926, and that unless said aggregate amount of claims is paid to the said Peter Hallbom estate by the administrator of the estate of Jacob E. Hallbom, decedent, from said insurance fund, the said minors and the plaintiffs in intervention will be deprived of their proportionate share of said claims as such heirs at law; that if said insurance fund be and remain a part of the assets of the Jacob E. Hallbom estate, then and in that event, the said plaintiffs in intervention and their said minor brother and sisters, will receive their proportionate share thereof as such heirs at law of said Peter Hallbom, [fol. 13] decedent, who, together with his wife, Selma Hallbom, the grandmother of the plaintiffs in intervention, and their said minor brother and sisters, were the sole heirs at law of said Jacob E. Hallbom, decedent.

Wherefore the intervenors pray for judgment confirming the order of the Probate Court allowing the final account of the administrator of the estate of Jacob E. Hallbom, decedent, and ordering and directing the said administrator of the said Jacob E. Hallbom estate to pay out of said insurance fund, as a part of the estate, the claims allowed against said estate, and distribute the residue thereof to the surviving father and mother as proposed in his final account, and for such other and further relief as to the court may seem just and proper.

Dated September 9, 1931.

Chas. A. Swenson, Attorney for Intervenors, Atwater, Minnesota.

Duly sworn to by Arlyene Alinder and Lillian Gabrielson. Jurat omitted in printing.

[fol. 14] IN DISTRICT COURT OF KANDIYOHI COUNTY

COMPLAINT IN INTERVENTION

Lillie F. McCrimmon, as guardian of Fred Junior Hallbom, a minor, for her complaint in intervention in the above entitled action, alleges and shows to this court:

1

That she is the duly appointed, qualified and acting guardian of Fred Junior Hallbom, a minor, having been appointed such guardian by the Probate Court in and for the county of Kandiyohi and state of Minnesota, on the 6th day of August, 1931.

2

That the said minor was born June 1, 1922, and was the sole surviving child of Fred R. Hallbom, decedent, who died May 19, 1927, and the said Fred R. Hallbom at the time of [fol. 15] his death was a surviving brother of Jacob E. Hallbom, decedent, and a claimant against his estate.

3

That said Jacob E. Hallbom died on the 20th day of October, 1925, and at the time of his death left a war risk insurance certificate in the sum of $10,000.00, payable in case of his death, to his father, Peter J. Hallbom.

4

That thereafter the War Veterans' Bureau paid monthly installments of $57.50 each, on said certificate to the said father until his death which occurred on the 22nd day of February, 1928.

5

That thereafter, on the 22nd day of June, 1928, the United States Veterans' Bureau paid to the estate of said Jacob E. Hallbom, by remittance to the above named Edward A. Pagel, as administrator of the said estate, the commuted value of said insurance certificate amounting to the sum of $9,116.00, which sum the administrator in his final account, proposed to apply and distribute as assets of said estate, which final account was approved by the Probate Court having jurisdiction.

6

That thereupon the guardian of the above named Selma Hallbom appealed from the order of the Probate Court allowing said final account and after successive appeals the [fol. 16] case is now remanded to the District Court of Kandiyohi county, Minnesota.

That the intervenor as such guardian, has such an interest in the matter in litigation between the other parties to the above entitled action, that she may either gain or lose by the direct legal effect of the judgment therein, in this, to-wit:

a. That at the time of the death of the said Jacob E. Hallbom, the said minor had a claim against the estate of said Jacob E. Hallbom, decedent, for savings account money borrowed by said Jacob E. Hallbom, from said minor, and his said claim was allowed by the Probate Court against the estate of said Jacob E. Hallbom, decedent, on the 22nd day of June, 1926, in the sum of $112.78.

b. That the administrator of the estate of Jacob E. Hallbom, decedent, has no funds or assets from which to pay said claim, or any part thereof, except and unless the insurance fund in question is permitted to be and remain a part of the assets of said estate as ordered and directed by the Probate Court.

c. That the said minor is one of the heirs at law of the estate of Fred R. Hallbom, decedent, which estate holds a claim against the estate of Jacob E. Hallbom, decedent, and unless said claim is paid from said insurance fund, the said minor will not receive anything as such heir at law, [fol. 17] said claim being the only assets of his said father's estate.

d. That said minor is one of the heirs at law of the estate of Peter Hallbom, decedent, the surviving father of said Jacob E. Hallbom, decedent; that the said Peter Hallbom was a claimant against the estate of his son, Jacob E. Hallbom, decedent, and his said claims were allowed by the Probate Court against said estate in the aggregate sum of $1,213.76 on the 22nd day of June, 1926, and that unless said aggregate amount of claims is paid to the said Peter Hallbom estate by the administrator of the estate of Jacob E. Hallbom, decedent, from said insurance fund, the said minor will be deprived of his proportionate share of said claims as such heir at law; that if said insurance fund be and remain a part of the assets of the Jacob E. Hallbom estate, then and in that event, the said minor will receive his proportionate share thereof as such heir at law of said

Peter Hallbom, decedent, who, together with his wife, Selma Hallbom, the grandmother of said minor, were the sole heirs at law of said Jacob E. Hallbom, decedent.

Wherefore the intervenor prays for judgment confirming the order of the Probate Court allowing the final account of the administrator of the estate of Jacob E. Hallbom, decedent, and ordering and directing the said administrator of the said Jacob E. Hallbom estate, to pay, out of said insurance fund as a part of the estate, the claims allowed against said estate and distribute the residue thereof [fol. 18] to the surviving father and mother as proposed in his final account, and for such other and further relief as to the court may seem just and proper.

Dated August 13, 1931.

Chas. A. Swenson, Attorney for Intervenor, Atwater, Minnesota.

Duly sworn to by Lillie F. McCrimmon. Jurat omitted in printing.

[fol. 19] In District Court of Kandiyohi County

Complaint in Intervention

Lillie F. McCrimmon, as administratrix of the estate of Fred R. Hallbom, decedent, for her complaint in intervention in the above entitled action, alleges and shows to this court:

1

That she is the duly appointed, qualified and acting administratrix of the estate of Fred R. Hallbom, decedent, having been appointed such by the Probate Court in and for the county of Kandiyohi and state of Minnesota, on the 6th day of August, 1931.

2

That said Fred R. Hallbom died on the 19th day of May, 1927, and at the time of his death was a surviving brother of the above named Jacob E. Hallbom, decedent, and left him surviving his widow, the intervenor herein, and his minor son, Fred Junior Hallbom, born June 1st, 1922.

3

That said Jacob E. Hallbom died on the 20th day of October, 1925, and at the time of his death left a war risk insurance certificate in the sum of $10,000.00, payable in case of his death, to his father, Peter J. Hallbom.

4

That thereafter the War Veterans' Bureau paid monthly installments of $57.50 each, on said certificate, to the said [fol. 20] father until his death which occurred on the 22nd day of February, 1928.

5

That thereafter, on the 22nd day of June, 1928, the United States Veterans' Bureau paid to the estate of said Jacob E. Hallbom by remittance to the above named Edward A. Pagel, as administrator of said estate, the commuted value of said insurance certificate amounting to the sum of $9,116.00, which sum the administrator, in his final account, proposed to apply and distribute as assets of said estate, which final account was approved by the Probate Court having jurisdiction.

6

That thereupon the guardian of the above named Selma Hallbom appealed from the order of the Probate Court allowing said final account and after successive appeals the case is now remanded to the District Court of Kandiyohi county, Minnesota.

7

That the intervenor, as such administratrix, has such an interest in the matter in litigation between the other parties to the above entitled action, that she may either gain or lose by the direct legal effect of the judgment therein, in this, to-wit:

a. That at the time of his death, the said Fred R. Hallbom left as his only estate a claim against the estate of his said brother, Jacob E. Hallbom, decedent, which claim was [fol. 21] allowed by the Probate Court of said Kandiyohi county in the sum of $720.07, on the 22nd day of June, 1926.

b. That the administrator of the estate of Jacob E. Hallbom, decedent, has no funds or assets from which to pay

said claim, or any part thereof, except and unless the insurance fund in question is permitted to be and remain a part of the assets of said estate as ordered and directed by the said Probate Court.

Wherefore the intervenor prays for judgment confirming the order of the Probate Court allowing the final account of the administrator of the estate of Jacob E. Hallbom, decedent, and directing that said administrator pay the above mentioned claim as directed by the said Probate Court out of said insurance fund, as a part of said estate, and for such other relief as to the court may seem just and proper.

Dated August 13, 1931.

Chas. A. Swenson, Attorney for Intervenor, Atwater, Minnesota.

Duly sworn to by Lillie F. McCrimmon. Jurat omitted in printing.

[fol. 22] IN DISTRICT COURT OF KANDIYOHI COUNTY

In re Estate of JACOB E. HALLBOM, Decedent

Formerly Entitled in the Supreme Court

EDWARD A. PAGEL, as Administrator of the Estate of Jacob E. Hallbom, Decedent,

vs.

JOHN G. MACLEAN, Administrator of the Estate of Selma Hallbom, Decedent

And Now Entitled

EDWARD A. PAGEL, as Administrator of the Estate of Jacob E. Hallbom, Decedent,

vs.

JOHN G. MACLEAN, Administrator of the Estate of Selma Hallbom, Decedent

[fol. 23] EBBA PAGEL, ANNIE COREY, CLARA HALLBOM and CHARLES HALLBOM, as Surviving Brothers and Sisters of Jacob E. Hallbom, Interpleaders,

LILLIE F. MCCRIMMON, as Administrator of the Estate of Fred R. Hallbom, Decedent; Lillie F. McCrimmon, as Guardian of Fred R. Hallbom, Jr., Arlyene Alinder, and Lillian Gabrielson, Intervenors

Proposed Case

A case containing all the evidence offered or introduced on the trial of this cause and all objections, rulings, orders and other proceedings at the trial.

The cause came on for trial before the Hon. Harold Baker, one of the judges of this court, without jury, on the 17th day of June, 1932, on a remand from the Supreme Court of the state of Minnesota, originally being an appeal from the Probate Court of Kandiyohi county, Minnesota, by Selma Hallbom, through her guardian, Clara M. Hallbom, to this court from the order of the said Probate Court allowing the final account of Edward A. Pagel, administrator of the estate of Jacob E. Hallbom, decedent. The following were made parties to this action, by order of the District Court of Kandiyohi county, dated June 29, 1931, viz.: Ebba Pagel, Annie Corey, Charles Hallbom and [fol. 24] Clara M. Hallbom, they having filed cross bills in intervention, which cross bills were thereafter amended. Lillie F. McCrimmon, as administrator of the estate of Fred R. Hallbom, decedent, filed a complaint in intervention. Said Lillie F. McCrimmon also filed a complaint in intervention as guardian of Fred R. Hallbom, Jr. Arlyene Alinder and Lillian Gabrielson filed a complaint in intervention.

Orin M. Oulman appeared as attorney for John G. MacLean, administrator of the estate of Selma Hallbom, deceased, and Charles A. Swenson appeared as attorney for the administrator of the estate of Jacob E. Hallbom, decedent, and as attorney for Lillie F. McCrimmon, as administrator of the estate of Fred R. Hallbom, decedent, and as guardian of Fred R. Hallbom, Jr., and for Arlyene Alinder and Lillian Gabrielson, interpleaders, Geo. L. Barnard appeared as attorney for Ebba Pagel, Annie Corey and Charles Hallbom. Whereupon, on said date, the following proceedings were had:

A jury was waived by all parties and the cause was submitted to the court on the following stipulated facts:

[fol. 25] STATE OF MINNESOTA,
County of Kandiyohi, ss:

DISTRICT COURT, TWELFTH JUDICIAL DISTRICT

In re Estate of Jacob E. Hallbom, Decedent; SELMA HALLBOM, Appellant

And Now Entitled in the Supreme Court

EDWARD A. PAGEL, as Administrator of the Estate of JACOB E. HALLBOM, Decedent, Petitioner,

vs.

JOHN G. MACLEAN, Administrator of the Estate of SELMA HALLBOM, Decedent

AGREEMENTS AS TO THE FACTS INVOLVED IN THIS APPEAL

I

Originally this was an appeal by Selma Hallbom through her guardian, Clara H. Hallbom, to the District Court, of Kandiyohi county, Minnesota, from the order of the Probate Court of said county dated the 23rd day of July, 1928, allowing the final account of the administrator of the estate of Jacob E. Hallbom, also known as Jacob Enoch Hallbom, decedent.

The administrator's final account showed that he had received war risk life insurance upon the life of said Jacob E. Hallbom, decedent, amounting to the sum of nine thou- [fol. 26] sand one hundred sixteen dollars ($9,116.00), and that there were not sufficient other assets belonging to his estate with which to pay the expenses of administration, or the claims of creditors.

There were claims of creditors filed against said estate in the amount of $3,354.32 which were allowed by said Probate Court as valid claims against said estate, on the 22nd day of June, 1926.

The administrator in his final account showed disbursements in payments of claims of creditors of said decedent in the amount of $3,791.38, which represents the said claims of creditors plus interest, and he further showed that he proposed to have the residue distributed to said Selma Hallbom and Peter J. Hallbom, surviving parents, as heirs

at law of the said Jacob E. Hallbom, decedent, said administrator made his final account for the purpose of having said Probate Court make its order thereon and to set running the time in which parties interested might appeal from said order allowing said final account.

In the final account is found the following statement relative to the alleged payment of said claims of creditors:

"The claims have not been paid by the administrator by reason of the fact that parties have appeared in open court and personally objected to payment of claims from funds derived from U. S. War Veterans' Insurance and your representative desired to withhold such payment until said question has been settled."

[fol. 27] The account of the administrator was thus filed in Probate Court for the purpose of having same become final and binding upon all parties unless appealed from within thirty days, and notice of said final order allowing said final account was served upon all interested parties.

II

Jacob E. Hallbom was a soldier in the United States Army in 1917 in France and while in such service he took out a policy of war risk life insurance in the sum of $10,000.00, payable in case of his death to his father, Peter J. Hallbom.

The application of Jacob E. Hallbom for war risk life insurance contains the following:

"In case any beneficiary die or become disqualified after becoming entitled to an installment but before receiving all installments, the remaining installments are to be paid to such person or persons within the permitted class of beneficiaries as may be designated in my last will and testament, or in the absence of such will, as would under the laws of my place of residence, be entitled to my personal property in case of intestacy."

The certificate issued to the said Jacob E. Hallbom by the Bureau of War Risk Insurance is as follows:

"Certificate No. 116,516

The United States of America, Treasury Department, Bureau of War Risk Insurance, Washington, D. C.

[fol. 28] Date insurance effective Nov. 1, 1917.

This certifies that Jacob Enoch Hallbom has applied for insurance in the amount of $10,000.00, payable in case of death or total permanent disability in monthly installments of $57.50.

Subject to the payment of the premiums required, this insurance is granted under the authority of an Act amending an Act entitled 'An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department,' approved September 2, 1914, and for other purposes, approved October 6, 1917, and subject in all respects to the provisions of such act, of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with the application for this insurance, and the terms and conditions published under authority of the Act, shall constitute the contract.

W. G. McAdoo, Secretary of the Treasury. William C. Delaney, Director of the Bureau of War Risk Insurance.

Countersigned at Washington, D. C.
S. Robin, Registrar."

On the back of said certificate, under the heading "Important Notice," is found the following:

"The insured may change the beneficiary without the consent of such beneficiary. This insurance is not assignable and is not subject to the claims of the creditors of the insured or of the beneficiaries.

[fol. 29] "Should a claim arise under this certificate you are requested to write direct to the Bureau of War Risk Insurance, Treasury Department, Washington, D. C., in order to secure a prompt settlement. There will be no expense in connection with proving a claim and collecting the amount due, other than small fees to notaries. It will not be necessary to consult or employ an attorney, claim agent, or other person to secure benefits under this certificate."

III

On the 20th day of October, 1925, said Jacob E. Hallbom died and was at the time a resident of Kandiyohi county, Minnesota.

Thereafter his father, Peter J. Hallbom, was awarded the insurance, payable in 240 monthly payments, and the War Veterans' Bureau continued thereafter to make said monthly payments to him until his death, which occurred on the 22nd day of February, 1928.

IV

At the time of his death, the said Jacob E. Hallbom was survived by his father, Peter J. Hallbom; his mother, Selma Hallbom; his brothers, Fred R. Hallbom and Charles Hallbom and his sisters, Ebba Pagel, Annie Corey and Clara M. Hallbom; and five children of his deceased sister, Rosie Gabrielson, to-wit: Selma, Arlyene, Lillian, Harlan and Alice Gabrielson.

[fol. 30]

V

Thereafter, on the 19th day of May, 1927, the said Fred R. Hallbom, one of the surviving brothers and a creditor of the said Jacob E. Hallbom, died and left him surviving his wife, Lillie F. Hallbom, and one son, Fred Hallbom, Jr., who was a creditor of said Jacob E. Hallbom estate.

VI

Peter J. Hallbom, the father, was survived by his wife, Selma Hallbom, in whose behalf the said appeal was taken, and he was also survived by his children, Ebba Pagel, Annie Corey, Clara M. Hallbom and Charles Hallbom; by his grandson, Fred Hallbom, Jr., son of his deceased son, Fred R. Hallbom; and by his grandchildren, Selma, Arlyene, Lillian, Harlan and Alice Gabrielson, children of his deceased daughter, Rosie Gabrielson.

VII

Before paying the remainder of said insurance the United States Veterans' Bureau required the appointment of an administrator of the estate of Jacob E. Hallbom, and a submission to the bureau of certified copies of letters of

administration and certified copies of other instruments of record in the Probate Court, which were duly submitted, an administrator of said estate having been theretofore appointed.

Upon due proof of the above having been presented to the said bureau it paid to Edward Pagel, administrator of [fol. 31] the estate of Jacob E. Hallbom, the sum of $9,116.00, the manner of such payment being check on the treasurer of the United States.

VIII

The said Selma Hallbom was the mother and an heir-at-law of said Jacob E. Hallbom, and her guardian appealed from the order of the Probate Court, subjecting the said insurance fund of $9,116.00 to the payment of expenses of administration and of said claims of creditors of the said Jacob E. Hallbom, and claimed that said Selma Hallbom was entitled to the entire sum as a beneficiary under the laws applicable under such insurance.

Upon said appeal the District Court reversed the order of the Probate Court and judgment was entered accordingly.

The administrator of the estate of Jacob E. Hallbom, decedent, then appealed from the judgment to the Supreme Court of the state of Minnesota, which court upheld the District Court with directions. 179 M. 402, 229 N. W. 334.

On petition of the administrator, certiorari was granted, 282 U. S. 819, 51 S. Ct. 25, 75 L. Ed. 732, October 13, 1930, to review the judgment of the Supreme Court of Minnesota, 179 M. 402, supra, awarding to said Selma Hallbom the proceeds of the war risk insurance in question.

[fol. 32] IX

During the pendency of the application for said writ, on the 7th day of August, 1930, the said Selma Hallbom died, leaving surviving her, Ebba Pagel, Annie Corey, Clara M. Hallbom and Charles Hallbom, children; and Fred Hallbom, Jr., son of Fred R. Hallbom, deceased son; and Arlyene, Selma, Lillian, Harlan and Alice Gabrielson, children of Rosie Gabrielson, deceased daughter; said Selma Hallbom died testate leaving a last will and testament wherein said Ebba Pagel, Annie Corey, Clara M. Hallbom,

Charles Hallbom, children, and Selma Gabrielson, granddaughter, were named as the sole devisees, and before hearing thereon John G. MacLean, as special administrator of the estate of said Selma Hallbom was substituted as appellee in place of the guardian of said Selma Hallbom.

X

The case was argued and submitted to the United States Supreme Court March 5, 1931, and decided by said court April 13, 1931. Pagel v. MacLean, 283 U. S. 266, 51 S. Ct. 416, 75 L. Ed. 1023.

In that case the United States Supreme Court vacated the judgment of the Supreme Court of the state of Minnesota and remanded the cause for further proceedings not inconsistent with its opinion.

[fol. 33] XI

That thereafter, on May 29, 1931, the Supreme Court of Minnesota remanded said case to the trial court, with the suggestion that the brothers and sisters of the soldier, if any, be made parties and that the court pass upon the question as to whether such brothers and sisters, or the administrator of the mother's estate, are now entitled to the money involved, 183 M. 429, 237 N. W. 21.

XII

Thereafter, on petition of the attorney for said John G. MacLean, administrator, the District Court in and for said Kandiyohi county, by its order dated June 29, 1931, ordered that Ebba Pagel, Annie Corey, Clara M. Hallbom and Charles Hallbom be made parties to this action, and it further ordered that said parties be given 20 days from the date of said order to file a cross bill setting forth any claim which they may deem they have to the insurance fund involved in these proceedings.

XIII

Thereupon the said Ebba Pagel, Annie Corey, Clara M. Hallbom and Charles Hallbom, by their attorney Charles Johnson, filed their cross bill claiming said insurance fund as the surviving living children of said Selma Hallbom, decedent; which cross bill was thereafter amended upon

substitution of Dahlberg and Barnard as attorneys in place of said Charles Johnson, by which amended cross bill said [fol. 34] Ebba Pagel, Annie Corey, Clara M. Hallbom and Charles Hallbom claimed said insurance fund as the now sole surviving living brothers and sisters of said Jacob E. Hallbom, decedent, and as successors of said Selma Hallbom and Peter Hallbom, decedents.

XIV

Thereafter, on about August 31, 1931, Lillie F. McCrimmon, as administratrix of the estate of Fred R. Hallbom, decedent, the hereinbefore referred to brother of the deceased soldier, filed her complaint in intervention, based on the claim of the said Fred R. Hallbom in the amount of $720.07, allowed against the soldier's estate, and prayed for judgment directing the administrator of the soldier's estate to pay the said claim out of said insurance fund as a part of the estate and for such other relief as to the court may seem just and proper.

Said Lillie F. McCrimmon also filed a complaint in intervention as guardian of Fred Hallbom, Jr., the minor son of Fred R. Hallbom, then deceased, but surviving brother of the deceased soldier, based upon the said minor's claim in the sum of $112.78 allowed against the estate of the deceased soldier, and further based upon the fact of his being an heir at law of the estate of his father, Fred R. Hallbom, and of the estate of his grandfather, Peter J. Hallbom, which estates are claimants against the deceased soldier's estate, and prayed for judgment directing the administrator of the soldier's estate to pay the said claim [fol. 35] out of said insurance fund as a part of the estate, and distribute all the residue to the surviving father and mother of said deceased soldier, and for such other relief as the court may deem proper.

XV

That on the 9th day of September, 1931, Arlyene, Alinder and Lillian Gabrielson, filed their complaint in intervention, based on the fact of their being, together with Harlan Gabrielson, Alice Gabrielson and Selma Gabrielson, minors, the surviving children of one Rosie Gabrielson, a deceased sister of the deceased soldier, and therefore heirs-at-law

of said Peter J. Hallbom, father of the deceased soldier, and who was a claimant against the estate of said soldier, and prayed for judgment directing the administrator of said soldier's estate to pay the claims allowed against said estate, and distribute the residue to the surviving father and mother of said deceased soldier as the sole heirs-at-law, and for such other relief as the court may deem proper.

[fol. 36] XVI

It is stipulated that the foregoing and the return of the Probate Court and any exhibits which may be introduced are to be considered as the agreed statement of facts in the resubmission of this appeal.

Dated May 2nd, 1932.

Orin M. Oulman, Attorney for Appellant, John G. MacLean, Special Administrator of the Estate of Selma Hallbom, Decedent, and for Clara Hallbom, Geo. L. Barnard, A. H. Dahlberg, Substituted in Place of Charles Johnson, Deceased, as Attorneys for the Surviving Living Children of Selma Hallbom, Decedent, Cross-claimants, Except Clara Hallbom. Chas. A. Swenson, Attorney for the Estate of Jacob E. Hallbom, Decedent, and for Lillie F. McCrimmon, Intervenor as Guardian and Administratrix, and Arlyene, Alinder and Lillian Gabrielson, as Intervenors.

[fol. 37] In District Court of Kandiyohi County

In re Estate of Jacob E. Hallbom, Decedent; Selma Hallbom, Appellant

And Now Entitled in the Supreme Court

Edward A. Pagel, as Administrator of the Estate of Jacob E. Hallbom, Decedent, Petitioner,

vs.

John G. MacLean, Administrator of the Estate of Selma Hallbom, Decedent

Findings of Fact, Conclusions of Law, and Order for Judgment

This case first came before this court for trial on the 23rd day of October, 1928, on appeal from the order of

the Probate Court of Kandiyohi county, by Selma Hallbom, through her guardian, Clara M. Hallbom. Findings of fact, conclusions of law and order for judgment were duly rendered by this court on the 1st day of February, 1929.

Thereafter the case was appealed to the Supreme Court of Minnesota and from there to the Supreme Court of the United States.

While the case was pending before the Supreme Court of the United States, Selma Hallbom died and the case was remanded to this court, without decision, for determination of new issues which arose by virtue of the death of Selma Hallbom.

[fol. 38] Subsequent to the decision of the Supreme Court of Minnesota, the Supreme Court of the United States handed down a decision in the case of Singleton v. Cheek, 52 S. Ct. 257; in view of this case I am of the opinion the former decision of this court, hereinbefore referred to, was erroneous.

Orin M. Oulman, Esquire, appeared as attorney for the appellant, John G. MacLean, and for Clara Hallbom. Messrs. Geo. L. Barnard and A. H. Dahlberg, substituted in place of Chas. Johnson, deceased, appeared as attorneys for the surviving children of Selma Hallbom. Chas. A. Swenson, Esquire, appeared as attorney for the estate of Jacob E. Hallbom, and for Lillie F. McCrimmon, intervenor, and for Arlyene, Alinder and Lillian Gabrielson, intervenors.

The court having considered the stipulation of facts herein and being fully advised thereon, makes the following:

Findings of Fact

I

Originally this was an appeal by Selma Hallbom through her guardian, Clara M. Hallbom, to the District Court of Kandiyohi county, Minnesota, from the order of the Probate Court of said county, dated the 23rd day of July, 1928, allowing the final account of the administrator of the estate of Jacob E. Hallbom, also known as Jacob Enoch Hallbom, decedent.

The administrator's final account showed that he had re-
[fol. 39] ceived war risk life insurance upon the life of said

Jacob E. Hallbom, decedent, amounting to the sum of nine thousand one hundred sixteen dollars ($9,116.00), and that there were not sufficient other assets belonging to his estate with which to pay the expenses of administration, or the claims of creditors. There were claims of creditors filed against said estate in the amount of $3,354.32 which were allowed by said Probate Court as valid claims against said estate, on the 22nd day of June, 1926.

The administrator in his final account showed disbursements in payments of claims of creditors of said decedent in the amount of $3,791.38, which represents the said claims of creditors plus interest, and he further showed that he proposed to have the residue distributed to said Selma Hallbom and Peter J. Hallbom, surviving parents, as heirs-at-law of the said Jacob E. Hallbom, decedent; said administrator made his final account for the purpose of having said Probate Court make its order thereon and to set the time in which parties interested might appeal from said order allowing said final account.

In the final account is found the following statement relative to the alleged payment of said claims of creditors:

"The claims have not been paid by the administrator by reason of the fact that parties have appeared in open court and personally objected to payment of claims from funds [fol. 40] derived from U. S. War Veterans' insurance, and your representative desired to withhold such payment until said question has been settled."

The account of the administrator was thus filed in Probate Court for the purpose of having same become final and binding upon all parties unless appealed from within thirty days, and notice of said final order allowing said final account was served upon all interested parties.

II

Jacob E. Hallbom was a soldier in the United States Army in 1917 in France and while in such service he took out a policy of war risk insurance in the sum of $10,000.00, payable in case of his death, to his father, Peter J. Hallbom.

The application of Jacob E. Hallbom for war risk life insurance contains the following:

"In case any beneficiary die or become disqualified after becoming entitled to an installment but before receiving all

installments, the remaining installments are to be paid to such person or persons within the permitted class of beneficiaries as may be designated in my last will and testament, or in the absence of such will, as would under the laws of my place of residence, be entitled to my personal property in case of intestacy."

The certificate issued to the said Jocob E. Hallbom by the Bureau of War Risk Insurance is as follows:

[fol. 41] "Certificate No. 116,516

The United States of America, Treasury Department, Bureau of War Risk Insurance, Washington, D. C.

Date Insurance effective Nov. 1, 1917.

This certifies that Jacob Enoch Hallbom has applied for insurance in the amount of $10,000.00, payable in case of death or total disability in monthly installments of $57.50.

Subject to the payment of the premiums required, this insurance is granted under the authority of an Act amending 'An Act entitled' An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department, approved September 2, 1914, and for other purposes, approved October 6, 1917, and subject in all respects to the provisions of such act, of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with the application for this insurance, and the terms and conditions published under authority of the Act, shall constitute the contract.

W. G. McAdoo, Secretary of the Treasury. William C. DeLancy, Director of the Bureau of War Risk Insurance.

Countersigned at Washington, D. C.

S. Robin, Registrar."

On the back of said certificate, under the heading "important notice," is found the following:

[fol. 42] "The insured may change the beneficiary without the consent of such beneficiary. This insurance is not

assignable and is not subject to the claims of the creditors of the insured or of the beneficiaries.

Should a claim arise under this certificate you are requested to write direct to the Bureau of War Risk Insurance, Treasury Department, Washington, D. C., in order to secure a prompt settlement. There will be no expense in connection with proving a claim and collecting the amount due, other than small fees to notaries. It will not be necessary to consult or employ an attorney, claim agent or other person to secure benefits under this certificate."

III

On the 20th day of October, 1925, said Jacob E. Hallbom died and was at the time a resident of Kandiyohi county, Minnesota. Thereafter his father, Peter J. Hallbom, was awarded the insurance, payable in 240 monthly payments, and the War Veterans' Bureau continued thereafter to make said monthly payments to him until his death, which occurred on the 22nd day of February, 1928.

IV

At the time of his death the said Jacob E. Hallbom was survived by his father, Peter J. Hallbom; his mother, Selma Hallbom; his brothers, Fred R. Hallbom and Charles Hallbom; and his sisters, Ebba Pagel, Annie Corey and Clara M. [fol. 43] Hallbom; and five children of his deceased sister, Rosie Gabrielson, to-wit: Selma, Arlyene, Lillian, Harlan and Alice Gabrielson.

V

Thereafter, on the 19th day of May, 1927, the said Fred R. Hallbom, one of the surviving brothers and a creditor of the said Jacob E. Hallbom, died and left surviving him his wife, Lillie E. Hallbom, and one son, Fred Hallbom, Jr., who was a creditor of said Jacob E. Hallbom estate.

VI

Peter J. Hallbom, the father, was survived by his wife, Selma Hallbom, in whose behalf the said appeal was taken, and he was also survived by his children, Ebba Pagel, Annie Corey, Clara M. Hallbom and Charles Hallbom; by his grandson, Fred Hallbom, Jr., son of his deceased son,

Fred R. Hallbom, and by his grandchildren, Selma, Arlyene, Lillian, Harlan and Alice Gabrielson, children of his deceased daughter, Rosie Gabrielson.

VII

Before paying the remainder of said insurance The United States Veterans' Bureau required the appointment of an administrator of the estate of Jacob E. Hallbom, and a submission to the bureau of certified copies of letters of administration and certified copies of other instruments of record in the Probate Court, which were duly submitted, an [fol. 44] administrator of said estate having theretofore been appointed.

Upon due proof of the above having been presented to the said bureau it paid to Edward Pagel, administrator of the estate of Jacob E. Hallbom, the sum of $9,116.00, the manner of such payment being a check on the treasurer of the United States.

VIII

The said Selma Hallbom was the mother and an heir-at-law of said Jacob E. Hallbom, and her guardian appealed from the order of the Probate Court, subjecting the said insurance fund of $9,116.00 to the payment of expenses of administration and of said claims of creditors of the said Jacob E. Hallbom, and claimed that said Selma Hallbom was entitled to the entire sum as a beneficiary under the laws applicable under such insurance.

Upon said appeal the District Court reversed the order of the Probate Court and judgment was entered accordingly.

The administrator of the estate of Jacob E. Hallbom, decedent, then appealed from the judgment to the Supreme Court of the state of Minnesota, which court upheld the District Court with directions. 179 Minn. 402, 229 N. W. 334.

On petition of the administrator, certiorari was granted, 282 U. S. 819, 51 St. Ct. 25, 75 L. Ed. 732, October 13, 1930, to review the judgment of the Supreme Court of Minnesota, 179 M. 402, supra, awarding to said Selma Hallbom [fol. 45] the proceeds of the war risk insurance in question.

IX

During the pendency of the application for said writ, on the 7th day of August, 1930, said Selma Hallbom died, leaving surviving her, Ebba Pagel, Annie Corey, Clara M. Hallbom and Charles Hallbom, children; and Fred Hallbom, Jr., son of Fred R. Hallbom, deceased son; and Arlyene, Selma, Lillian, Harlan and Alice Gabrielson, children of Rosie Gabrielson, deceased daughter; said Selma Hallbom died testate, leaving a last will and testament wherein said Ebba Pagel, Annie Corey, Clara M. Hallbom, Charles Hallbom, children, and Selma Gabrielson, granddaughter, were named as the sole devisees, and before hearing thereon John G. MacLean, as special administrator of the estate of said Selma Hallbom was substituted as appellee in place of the guardian of said Selma Hallbom.

X

The case was argued and submitted to the United States Supreme Court March 5, 1931, and decided by said court April 13, 1931: Pagel v. MacLean, 282 U. S. 266, 51 S. Ct. 416, 75 L. Ed. 1923. In that case the United States Supreme Court vacated the judgment of the Supreme Court of the state of Minnesota and remanded the cause for further proceedings not inconsistent with its opinion.

[fol. 46]

XI

That thereafter, on May 29, 1931, the Supreme Court of Minnesota remanded said case to the trial court, with the suggestion that the brothers and sisters of the soldier, if any, be made parties and that the court pass upon the question as to whether such brothers and sisters, or the administrator of the mother's estate, are now entitled to the money involved. 183 Minn. 429, 237 N. W. 21.

XII

Thereafter, on petition of the attorney for said John G. MacLean, administrator, the District Court in and for said Kandiyohi county, by its order dated June 29, 1931, ordered that Ebba Pagel, Annie Corey, Clara M. Hallbom and Charles Hallbom be made parties to this action, and it further ordered that said parties be given twenty days from the date of said order to file a cross bill setting forth any

claim which they may deem they have to the insurance fund involved in these proceedings.

XIII

Thereupon the said Ebba Pagel, Annie Corey, Clara M. Hallbom and Charles Hallbom, by their attorney, Charles Johnson, filed their cross bill claiming said insurance fund as the surviving living children of said Selma Hallbom, decedent; whch cross bill was thereafter amended upon substitution of Dahlberg & Barnard as attorneys in place of said Charles Johnson, by which amended cross bill said Ebba Pagel, Annie Corey, Clara M. Hallbom and Charles [fol. 47] Hallbom claimed said insurance fund as the now sole surviving living brothers and sisters of said Jacob E. Hallbom, decedent, and as the successors of said Selma Hallbom and Peter Hallbom, decedents.

XIV

Thereafter, on about August 31, 1931, Lillie F. McCrimmon, as administratrix of the estate of Fred R. Hallbom, decedent, the hereinbefore referred to brother of the deceased soldier, filed her complaint in intervention, based on the c. m of the said Fred R. Hallbom in the amount of $720.07, allowed against the soldier's estate, and prayed for judgment directing the administrator of the soldier's estate to pay the said claim out of said insurance fund as a part of the estate and for such other relief as to the court may seem just and proper.

Said Lillie F. McCrimmon also filed a complaint in intervention as guardian of Fred Hallbom, Jr., the minor son of Fred R. Hallbom, then deceased, but surviving brother of the deceased soldier, based upon the said minor's claim in the sum of $112.78, allowed against the estate of the deceased soldier, and further based upon the fact of his being an heir at law of the estate of his father, Fred R. Hallbom, and of the estate of his grandfather, Peter J. Hallbom, which estates are claimants against the deceased soldier's estate, and prayed for judgment directing the administrator of the soldier's estate to pay the said claim out of [fol. 48] said insurance fund as a part of the estate, and distribute all the residue to the surviving father and mother of said deceased soldier, and for such other relief as the court may deem proper.

XV

That on the 9th day of September, 1931, Arlyene Alinder and Lillian Gabrielson filed their complaint in intervention, based on the fact of their being, together with Harlan, Alice and Selma Gabrielson, minors, the surviving children of one Rosie Gabrielson, a deceased sister of the deceased soldier, and therefore heirs-at-law of said Peter J. Hallbom, father of the deceased soldier, and who was a claimant against the estate of said soldier, and prayed for judgment directing the administrator of said soldier's estate to pay the claims allowed against said estate, and distribute the residue to the surviving father and mother of said deceased soldier as the sole heirs-at-law, and for such other relief as the court may deem proper.

XVI

It is stipulated that the foregoing and the return of the Probate Court and any exhibits which may be introduced are to be considered as the agreed statement of facts in the resubmission of this appeal.

Conclusions of Law

I

That the commuted insurance herein, in the sum of $9,116.00, is an asset of the estate of Jacob E. Hallbom, [fol. 49] deceased, and became assets of said estate immediately upon the death of the beneficiary, Peter J. Hallbom.

II

That said commuted insurance, in the sum of $9,116.00, as an asset of the estate of Jacob E. Hallbom, is subject to the claims of creditors of the estate of Jacob E. Hallbom.

III

That after the payment of expenses of administration of the estate of Jacob E. Hallbom and claims of creditors therein, the balance, if any, of said commuted insurance shall be distributed to the heirs of said Jacob E. Hallbom in accordance with the intestacy laws of the state of Minnesota, such heirs to be determined as of the date of the death of Jacob E. Hallbom.

IV

That the order of the Probate Court herein be and hereby is affirmed.

V

That this case be remanded to the Probate Court of Kandiyohi county, Minnesota, with directions that said court proceed in accordance with this order.

Let judgment be entered accordingly.
A 30 day stay is granted any party to this action.
Dated November 10, 1932.

Harold Baker, Judge.

[fol. 50] In District Court of Kandiyohi County

In re Estate of Jacob E. Hallbom, Decedent

Formerly Entitled in the Supreme Court

Edward A. Pagel, as Administrator of the Estate of Jacob E. Hallbom, Decedent,

vs.

John G. MacLean, Administrator of the Estate of Selma Hallbom, Decedent

And Now Entitled

Edward A. Pagel, as Administrator of the Estate of Jacob E. Hallbom, Decedent,

vs.

John G. MacLean, as Administrator of the Estate of Selma Hallbom, Decedent

Ebba Pagel, Annie Corey, Clara Hallbom, and Charles Hallbom, as Surviving Brothers and Sisters of Jacob E. Hallbom, Intervenors

Lillie F. McCrimmon, as Administrator of the Estate of Fred R. Hallbom, Decedent; Lillie F. McCrimmon, as Guardian of Fred R. Hallbom, Jr.; Arlyene Alinder and Lillian Gabrielson, Interpleaders

STIPULATION FOR SETTLED CASE

It is hereby stipulated between the attorneys for the respective parties to the foregoing entitled action, that the [fol. 51] foregoing proposed case, consisting of 21 pages of typewritten matter, together with the return of the Probate Court, may be taken as conformable to the truth and as containing all the evidence offered or introduced at the trial of said cause and all objections, rulings, orders and all other proceedings of said trial, and that the same may be settled and allowed as the settled case herein by the Honorable Harold Baker, judge, without further notice.

L. J. Van Fossen, Orin M. Oulman, Attorneys for John G. MacLean, Administrator. Chas. A. Swenson, Attorney for Edw. A. Pagel, Admr.; Lillie F. McCrimmon, Admr.; Lillie F. McCrimmon, Grdn.; Arlyene Alinder, and Lillian Gabrielson. Geo. L. Barnard, Attorney for Surviving Brothers and Sisters of Jacob E. Hallbom, Interpleaders.

IN DISTRICT COURT OF KANDIYOHI COUNTY

CERTIFICATE OF TRIAL JUDGE SETTLING CASE

I hereby certify that I have examined the foregoing settled case, consisting of 21 typewritten pages and have found the same to contain all the evidence produced on the trial of said action, and all offers of evidence, rulings thereon, exceptions taken, and all other proceedings had or [fol. 52] taken on the trial of said cause and that the same is in all respects conformable to the truth and the same is hereby settled and signed as and for the settled case in this action.

Dated January 5th, 1933.

Harold Baker, District Judge.

IN DISTRICT COURT OF KANDIYOHI COUNTY

JUDGMENT

The above entitled action came on for trial before Honorable Harold Baker, one of the judges of the above named court, on the 17th day of June, 1932, after having been remanded to this court by the Supreme Court of the state of Minnesota by its order dated May 29th, 1931, and the court after considering the stipulation of facts on file during the

evidence adduced at said trial, it being fully advised in the premises, did, on the 10th day of November, 1932, make its findings of fact and order of judgment herein, and the same were filed on the 12th day of November, 1932.

Now, therefore, pursuant to said order and upon motion of Chas. A. Swenson, attorney for Edward A. Pagel, administrator of the estate of Jacob E. Hallbom, decedent, and for Lillie F. McCrimmon, as intervenor and as guardian and administratrix, and for Arlyene Alinder and Lillian Gabrielson, as intervenors, it is hereby adjudged:

1

That the commuted insurance herein, in the sum of $9,116.00, is an asset of the estate of Jacob E. Hallbom, [fol. 53] deceased, and became assets of said estate immediately upon the death of the beneficiary, Peter J. Hallbom.

2

That said commuted insurance, in the sum of $9,116.00, as an asset of the estate of Jacob E. Hallbom, is subject to the claims of creditors of the estate of Jacob E. Hallbom.

3

That after the payment of the expenses of administration of the estate of Jacob E. Hallbom and claims of creditors therein, the balance, if any, of said commuted insurance shall be distributed to the heirs of said Jacob E. Hallbom in accordance with the intestacy laws of the state of Minnesota, such heirs to be determined as of the date of the death of Jacob E. Hallbom.

4

That the order of the Probate Court herein be and hereby is affirmed.

5

That this case be remanded to the Probate Court of Kandiyohi county, Minnesota, with directions that said court proceed in accordance with this judgment.

Dated December 19, 1932.

By the Court.

Ed Sanderson, Clerk of District Court, Kandiyohi County, Minnesota.

[fol. 54] IN DISTRICT COURT OF KANDIYOHI COUNTY

In re Estate of Jacob E. Hallbom, Decedent

Formerly Entitled in the Supreme Court

EDWARD A. PAGEL, as Administrator of the Estate of Jacob Hallbom, Decedent,

vs.

JOHN G. MACLEAN, Administrator of the Estate of Selma Hallbom, Decedent

And Now Entitled

EDWARD A. PAGEL, as Administrator of the Estate of Jacob E. Hallbom, Decedent,

vs.

JOHN G. MACLEAN, as Administrator of the Estate of Selma Hallbom, Decedent

EBBA PAGEL, ANNIE COREY, CLARA HALLBOM, and CHARLES Hallbom, as Surviving Brothers and Sisters of Jacob E. Hallbom, Interpleaders

LILLIE F. MCCRIMMON, as Administrator of the Estate of Fred R. Hallbom, Decedent; Lillie F. McCrimmon, as Guardian of Fred R. Hallbom, Jr., Arlyene Alinder, and Lillian Gabrielson, Intervenors

[fol. 55] NOTICE OF APPEAL TO SUPREME COURT

To Charles A. Swenson, attorney for Edward A. Pagel, as administrator of the estate of Jacob E. Hallbom, decedent; Lillie F. McCrimmon, as administrator; Lillie F. McCrimmon, as guardian; Arlyene Alinder, and Lillian Gabrielson, and to L. J. Van Fossen and Orin M. Oulman, attorneys for John G. MacLean, administrator of the estate of Selma Hallbom, decedent, respondents, and to Ed Sanderson, clerk of said District Court:

Please take notice, that the above named interpleaders appeal to the Supreme Court of the state of Minnesota from the judgment of said District Court entered herein on the 23rd day of December, 1932, affirming the order of the

Probate Court of said Kandiyohi county, and remanding said cause to said Probate Court, which said order of the Probate Court was made on the 23rd day of July, 1928, and from the whole thereof.

Dated December 23rd, 1932.

Geo. L. Barnard, Willmar, Minnesota, Attorney for Interpleaders.

Due and personal service of the within notice of appeal is hereby admitted this 31st day of December, 1932.

L. J. Van Fossen, Orin M. Oulman, Attorneys for John G. MacLean, Admr., Respondent.

[fol. 56] Due and personal service of the within notice of appeal is hereby admitted this 23rd day of December, 1932.

Chas. A. Swenson, Attorney for Edward A. Pagel, Admr., Respondent.

Due and personal service of the within notice of appeal is hereby admitted this 23rd day of January, 1933.

Ed Sanderson, Clerk of District Court, Kandiyohi County, Willmar, Minnesota.

Kandiyohi County. Wilson, C. J.

27721

EDWARD A. PAGEL, as Administrator of the Estate of Jacob E. Hallbom, Decedent, Petitioner,

vs.

JOHN G. MACLEAN, Administrator of the Estate of Selma Hallbom

SUPPLEMENTAL OPINION

WILSON, C. J.:

Since our opinion was filed in this case on February 21, 1930, and reported in 179 Minn. 402, the case has been taken to the United States Supreme Court on writ of certiorari. While pending there Selma Hallbom, the soldier's mother, the respondent in this court, died and John G. MacLean having been appointed administrator of her estate was substituted as respondent.

On April 13, 1931, the United States Supreme Court filed its opinion vacating the opinion and judgment of this court and remanded the cause for further proceedings not inconsistent with the suggestion therein made; and among other things the court said:

"'By reason of her decease, the question whether the mother alone of the permitted class is entitled to receive the proceeds of the insurance, in preference to the creditors of the insured, presented by the record and decided by the state court, has now become subsidiary to other questions, the determination of which is necessary to the disposition of the present suit and may render unnecessary any adjudication of the rights of the mother. Assuming, as the state court held, that the mother was entitled to the insurance in her lifetime, it does not follow that respondent, by virtue of his office as administrator, or claiming in the mother's right, is entitled to payment of the insurance under the judgment in her favor. That depends on the interpretation of § 300, directing that the insurance 'shall be payable only' to members of the permitted class, and on the question whether, under the provisions of the act and of the certificate, the

insurance should now go to the estate of the mother, to the creditors of the insured, or to the surviving brothers and sisters, if any, none of whom is a party to this suit. That question was not decided by the state court, for the review of whose judgment certiorari was granted, and is not one which can be disposed of on this record."

Upon reconsideration we adhere to and reaffirm our prior holding so far as the questions contained therein may be important or applicable; but we remand the cause to the trial court with the suggestion that the brothers and sisters of the soldier, if any, be made parties, and that the court pass upon the question as to whether such brothers and sisters or the administrator of the mother's estate is now entitled to the money involved.

Remanded.

Wilson, C. J.

Filed May 29, 1931. Grace Kaercher Davis, Clerk.

Endorsed: Filed June 30, 1933. Grace Kaercher Davis, Clerk Minn. Supreme Court

Kandiyohi County. Stone, J.

No. 115. 29456-63

EDWARD A. PAGEL, Admnr. of Estate of Jacob E. Hallbom, Respondent-Respondent,

vs.

JOHN G. MCLEAN, Admnr. of Estate of Selma Hallbom, Appellant-Respondent; Ebba Pagel et al., Interpleaders-Respondents-Appellants; Lillie F. McCrimmon, Admr. of Estate of Fred R. Hallbom, etc., et al., Intervenors-Respondents-Respondents

Syllabus

1. No litigated issue becomes res judicata until final judgment.

2. On a federal issue, this court is but an intermediate appellate court, the final arbiter being the Supreme Court

of the United States. So the opinion and decision of this court on such an issue, reviewed on certiorari by the United States Supreme Court and there vacated, does not remain the law of the case for any purpose. It is of no effect whatever.

3. Under the war risk insurance act, as amended (latest in 1925; 38 U. S. C. A. 514), the commuted value of the insurance becomes part of the estate of the deceased soldier for purposes of distribution as of the date of his death, where the designated beneficiary either does not survive the insured or survives him and dies before receiving all the installments which otherwise would have been payable to him.

4. Such a fund, becoming part of the estate of an intestate, is to be distributed according to the applicable laws of descent. There being in the latter nothing to exempt the fund from the claims of creditors, they are entitled to have it applied as far as needed to the payment of their claims.

Affirmed.

OPINION

STONE, Justice:

On appeal from probate court, judgment was entered in the district court that the proceeds of war risk insurance on the life of the deceased soldier became an asset of his estate as of the date of his death. From that judgment separate appeals (consolidated here) have been taken, one by surviving brother and sisters of the deceased; and another by John G. MacLean, as special administrator of the estate of Selma Hallbom, mother of the soldier, who died pending this proceeding for the probate of her son's estate.

Jacob E. Hallbom, a soldier of the United States during the World War serving in the area of hostilities in France, took out war risk insurance in the sum of $10,000. The one named beneficiary was Peter J. Hallbom, his father. The insured departed this life October 20, 1925. Thereafter the father, as beneficiary, received monthly installments until he too passed away February 22, 1928. Selma Hallbom, mother of the soldier and wife of Peter, the beneficiary, survived both.

Edward A. Pagel, as administrator of the estate of the deceased soldier, in his final account reported to the probate court that claims had been allowed against the estate, but not paid because objection had been made to their payment "from funds derived from U. S. War Veterans Insurance". The probate court held that the commuted fund ($9,116) was a part of the estate of the deceased soldier and subject to the payment of his debts. Selma, the soldier's mother, appealed to the district court, which held that the fund was not subject to the soldier's debts but should pass free of them to the soldier's heirs within the permitted class of beneficiaries (38 U. S. C. A. § 511). Upon appeal by the administrator to this court (In re Estate of Hallbom, 179 Minn. 402, 229 N. W. 344) we affirmed the judgment. Our opinion then was that they took as beneficiaries and not as heirs at law.

To review that decision, certiorari was granted by the Supreme Court of the United States (Pagel v. Hallbom, 282 U. S. 819, 75 L. Ed. 732). While the petition was pending, the mother, Selma Hallbom, died testate August 7, 1930. By her will all her estate was left to her children, Ebba, Annie Corey, Clara Hallbom and Charles Hallbom, and a granddaughter, Selma Gabrielson, who had been interpleaded. John G. MacLean was appointed special administrator of her estate and was substituted in her stead as a respondent in the Supreme Court. Because of the change in the situation resulting from the death of Selma Hallbom, the Supreme Court declined decision on the merits (Pagel, Adm'r v. MacLean, Adm'r, 283 U. S. 266, 75 L. Ed. 1023), but vacated our judgment in the matter and remanded the cause, "in order that the state court may be free to deal adequately with the questions which must be determined in order to make appropriate distribution of the fund involved."

The case returning here, we filed an ex parte opinion (183 Minn. 429), remanding the case to the district court with the suggestion that the surviving brother and sisters of the deceased soldier be made parties. Thereupon the case went back to the district court and the decision there already indicated. Upon the grounds hereinafter stated, we affirm. The matter is determined by federal law. That law as it now stands required the decision below.

1. Our former decision (179 Minn. 402, 229 N. W. 344) is invoked by appellants as res judicata. It does not have

that effect because no issue becomes res judicata until made so by final judgment. In this case there is as yet no such judgment. Dunnell, Minn. Dig., §§ 398, 5159, et seq.

2. Our former decision must now be considered erroneous because in disagreement with the rule settled by the Supreme Court of the United States. But, say appellants, it nevertheless remains the law of the case. Their argument is that, even though the decision was not an end of the matter so as to make it res judicata, it yet stands as the decision of an appellate court, so settling the law of the case as to be controlling in district and probate courts and also here. That view is erroneous because, on a federal question, this is but an intermediate appellate court, rather than the tribunal of last resort. The law is that a rule "laid down by an intermediate appellate court on appeal is not binding on that court on a second appeal where the highest appellate court has, since the first appeal," even in another case, "decided the precise question" otherwise. So, also, "a decision of an intermediate appellate court, which has been reversed or modified on appeal and held for naught, is not binding upon it upon a subsequent appeal of the same case." — A. L. R. 1275, citing Zerulla v. Supreme Lodge O. M. F., 223 Ill. 518, 79 N. E. 160; Steele v. Boley, 7 Utah 64, 24 P. 755. See also 8 A. L. R. 1033 and 67 A. L. R. ——. In Sands v. Am. Ry. Express Co., 159 Minn. 25, 198 N. W. 402, it was explained that, although we adhere strictly to the "doctrine of the law of the case," the rule is one of practice and not substantive law. So it expresses no "limitation of power." There we overruled a former decision in the same case in deference to the federal rule settled by a later and controlling decision of the Supreme Court of the United States. In contrast is Goneau v. Minneapolis, St. P. & S. S. M. Ry. Co., 159 Minn. 41, 198 N. W. 403, 405, where the federal rule was considered not inconsistent with our former decision. So the latter retained its effect as law of the case. All else aside, our former decision in the instant case was vacated by the Supreme Court and so is of no effect.

3. The war risk insurance act (see, as to origin, 40 Statutes at Large 398), in respect to the present issue, has been much changed by amendment and now provides (38 U. S. C. A. § 514):

"If no person within the permitted class be designated as beneficiary * * * by the insured either in his lifetime or by his last will and testament, or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable, said value to be computed as of date of last payment made under any existing award."

The effect of that section is settled by Singleton v. Cheek, 284 U. S. 492, 76 L. Ed. 419. "By that amendment," the court said, "the rule, which, upon the happening of the contingencies named in the prior acts, limited the benefit of the unpaid installments to persons within the designated class of permittees, was abandoned, and 'the estate of the insured' was wholly substituted as the payee. All installments, whether accruing before the death of the insured or after the death of the beneficiary named in the certificate of insurance, as a result, became assets of the estate of the insured as of the instant of his death, to be distributed to the heirs of the insured in accordance with the intestacy laws of the state of his residence, such heirs to be determined as of the date of his death, and not as of the date of the death of the beneficiary." Comment is made that the state courts, with almost entire unanimity, have reached the same conclusion. The state cases pro and con are cited in a footnote, and among the relatively few "directly or apparently to the contrary" is our former decision in this case (179 Minn. 402, 229 N. W. 344). So, the district court was right in holding that the fund in question is to be considered part of the estate of the deceased soldier, having become such, for purposes of distribution, as of the date of his death.

4. To be distributed as part of the estate of the deceased, the fund is subject to the claims of creditors, whose claims were presented to and allowed by the probate court, unless there is statutory bar. There is none. It is provided by 38 U. S. C. A. § 454 that "the compensation, insurance, and maintenance and support allowance payable under Parts II, III, (relating to insurance) and IV respectively, shall not be assignable; shall not be subject to the claims of creditors

of any person to whom an award is made under Parts II, III, or IV; and shall be exempt from all taxation." However it might be otherwise, and in view of the amendment of § 514, construed in Singleton v. Cheek, 284 U. S. 492, 76 L. Ed. 419, it cannot be held now that exemption of the fund survives both insured and beneficiary for benefit of the heirs of the former. The disclosed purpose of the exemption was to safeguard to the beneficiaries of the law "the appropriations and payments made for their benefit." Spicer v. Smith, — U. S. —, 53 S. Ct. 415. (In this decision it was held that a deposit of war risk insurance funds by the guardian of an incompetent veteran in a bank which subsequently became insolvent was not entitled to priority of payment out of the assets of the bank as a debt due to the United States. In effect, that overrules Anderson v. Olivia State Bank, 186 Minn. 396, 243 N. W. 398.) That obvious purpose negatives any to safeguard the proceeds of war risk insurance for the benefit of the heirs of the deceased. The absence of ethical ground for such a purpose argues against its existence, in the absence of language demonstrating that it was the intent of Congress. If, as declared by the amendment of 1925, and as held in Singleton v. Cheek, the fund after the death of both the insured and beneficiaries becomes an asset generally of the estate of the former as of the date of his death, it must follow, in absence of controlling declaration of Congress to the contrary or of some effective state exemption law, of which we have none, that the fund is available for the payment of the claims of the creditors of the deceased soldier.

As we construe it, the decision of the Supreme Court of the United States in this case (Pagel as adm'r v. MacLean as adm'r, 283 U. S. 266, 75 L. Ed. 1023), at least by implication, requires that holding. The provision of the certificate, which was but a repetition of the law, that this insurance * * * is not "subject to the claims of the creditors of the insured or of the beneficiaries" was quoted in connection with the comment that § 300 of the War Risk Insurance Act (43 Statutes at Large 624, amended 43 Statutes at Large 1308; 38 U. S. C. A. § 511) declared the purpose to afford commissioned officers and enlisted men "protection for themselves and their dependents." (None of the presently interested heirs were dependents of the deceased

soldier.) The opinion proceeds to the effect that the question presented by the record and decided by this court was "whether, under the provisions of the act and of the certificate of insurance, the administrator of the insured received the insurance as an asset of the estate subject to the payment of debts and administration expenses, or a trustee for the benefit of such of the surviving members of 'the permitted class' of beneficiaries as would be entitled to decedent's personal property under the laws of Minnesota * * *. The court held that despite the difference in language between § 303 (38 U. S. C. A. § 514) and its earlier forms * * * the members of the permitted class were to be preferred over creditors of the insured, and directed judgment for payment of the insurance to the mother, as the only person in the permitted class entitled to take the personal property of insured under the intestacy laws of the state."

"The difference in language" so referred to was considered in Singleton v. Cheek to have effected a "radical change"—radical in that the new law made the fund generally a part of the estate of the insured as of the date of his death instead of the property of the heirs of the insured within the permitted class of beneficiaries. That change unavoidably makes such funds subject to the claims of creditors of the insured in the absence of any law to the contrary in the state of the residence of the deceased soldier. As part of the nonexempt personal estate of the deceased, our law expressly subjects it to the payment of his debts (Mason's Minn. St., § 8726). The same result has been matter of decision, or at least assumption, in many other States. Whaley v. Johnson, — S. C. —, 149 S. E. 841; In re Dempster's Estate, — Mich. —, 226 N. W. 243; In the matter of Storum's Estate, 221 N. Y. S. 771; In re Prudens, 199 N. C. 256, 154 S. E. 7; In re McQuade's Estate, — Colo. —, 296 P. 1023 (expressly and properly disapproving of our former decision in this case); Gunn v. Yancey, — Mo. —, 33 S. W. (2) 1029. There is nothing in our decision of Spongburg v. Lidstrom, 187 Minn. 650, 245 N. W. 636, going against the views above expressed; a very different although somewhat related issue having been involved there.

The judgment is affirmed.

Stone, J.

STATE OF MINNESOTA SUPREME COURT

29456

EDWARD A. PAGEL, as Administrator of the Estate of Jacob E. Hallbom, Decedent, Respondent,

vs.

JOHN G. MACLEAN, as Administrator of the Estate of Selma Hallbom, Decedent, Appellant; Ebba Pagel, Annie Corey, Clara Hallbom, and Charles Hallbom, as Surviving Brothers and Sisters of Jacob E. Hallbom, Interpleaders, Respondents; Lillie F. McCrimmon, as Administrator of the Estate of Fred R. Hallbom, Decedent; Lillie F. McCrimmon, as Guardian of Fred R. Hallbom, Jr., Arlyene Alinder, and Lillian Gabrielson, Intervenors, Respondents

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the judgment of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Kandiyohi, be, and the same hereby is, in all things affirmed.

Dated and signed July 11 A. D. 1933.

By the Court.

Attest:

Grace Kaercher Davis, Clerk.

STATE OF MINNESOTA SUPREME COURT

29463

EDWARD A. PAGEL, as Administrator of the Estate of Jacob E. Hallbom, Decedent, Respondent,

vs.

JOHN G. MACLEAN, as Administrator of the Estate of Selma Hallbom, Decedent, Respondent; Ebba Pagel, Annie Corey, Clara Hallbom, and Charles Hallbom, as Surviving Brothers and Sisters of Jacob E. Hallbom, Interpleaders, Appellants; Lillie F. McCrimmon, as Administrator of the Estate of Fred R. Hallbom, Decedent; Lillie F. McCrimmon, as Guardian of Fred R. Hallbom, Jr., Arlyene Alinder, and Lillian Gabrielson, Intervenors, Respondents

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the judgment of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Kandiyohi, be, and the same hereby is, in all things affirmed.

Dated and signed July 11, A. D. 1933.

By the Court.

Attest:

Grace Kaercher Davis, Clerk.

STATE OF MINNESOTA SUPREME COURT

I, Grace Kaercher Davis, Clerk of said Court, do hereby certify that the foregoing pages numbered from 1 to 67 inclusive, are a true, full and complete transcript of the record and proceedings in the case of Edward A. Pagel, Admr. of Estate of Jacob E. Hallbom, Respondent-Respondent, vs. John G. McLean, Admr. of Estate of Selma Hallbom, Appellant-Respondent; Ebba Pagel et al., Interpleaders-Respondents-Appellants; Lillie F. McCrimmon, Admr. of Estate of Fred R. Hallbom, etc., et al., Intervenors-Respondents-Respondents, 29456-63, and also of

the opinions of the court rendered therein, as the same now appear on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at my office, in the city of Saint Paul, Minnesota, this 2nd day of October, 1933.

Grace Kaercher Davis, Clerk, by Mae Sherman, Deputy. (Seal of the Supreme Court, State of Minnesota.)

[fol. 69] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 20, 1933

The petition herein for a writ of certiorari to the Supreme Court of the State of Minnesota is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 38,129. Minnesota Supreme Court. Term No. 526. Ebba Pagel, Annie Corey, Clara Hallbom, and Charles Hallbom, petitioners, vs. Edward Pagel, as administrator of the estate of Jacob E. Hallbom, et al. Petition for a writ of certiorari and exhibit thereto. Filed October 10, 1933. No. 526, O. T., 1933.

(4304)

FILE COPY

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Supreme Court of the United States

OCTOBER TERM, 1933.

No. 526

EBBA PAGEL, ANNIE COREY, CLARA HALLBOM AND CHARLES HALLBOM,

Petitioners,

vs.

EDWARD PAGEL AS ADMINISTRATOR OF THE ESTATE OF JACOB E. HALLBOM, JOHN G. MACLEAN AS ADMINISTRATOR OF THE ESTATE OF SELMA HALLBOM, LILLIE F. MCCRIMMON AS ADMINISTRATRIX OF THE ESTATE OF FRED R. HALLBOM, LILLIE F. MCCRIMMON AS GUARDIAN OF FRED R. HALLBOM, JR., ARLYENE, ALINDER AND LILLIAN GABRIELSON,

Respondents.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

L. D. BARNARD,
Counsel for Petitioner,
Renville, Minnesota.

GEO. L. BARNARD,
Of Counsel for Petitioner,
Willmar, Minnesota.

Hayward Brief Co., 601-7 Fourth Ave. So., Minneapolis

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Supreme Court of the United States

OCTOBER TERM, 1933.

EBBA PAGEL, ANNIE COREY, CLARA HALLBOM AND CHARLES HALLBOM,

Petitioners,

vs.

EDWARD PAGEL AS ADMINISTRATOR OF THE ESTATE OF JACOB E. HALLBOM, JOHN G. MACLEAN AS ADMINISTRATOR OF THE ESTATE OF SELMA HALLBOM, LILLIE F. MCCRIMMON AS ADMINISTRATRIX OF THE ESTATE OF FRED R. HALLBOM, LILLIE F. MCCRIMMON AS GUARDIAN OF FRED R. HALLBOM, JR., ARLYENE ALINDER AND LILLIAN GABRIELSON,

Respondents.

PETITION FOR WRIT OF CERTIORARI.

Your petitioners respectfully show that they seek a review by this Court of the final judgment of the Supreme Court of Minnesota, the court of last resort of that state, affirming the judgment of the District Court of Kandiyohi county, Minnesota, which judgment affirmed an order of the Probate Court of Kandiyohi county, Minnesota, allowing the final account of the administrator of the estate of Jacob E. Hallbom, in which final account said administrator proposed to use the proceeds of War Risk Insurance on the life of said Jacob E. Hallbom to pay claims of creditors of the estate of Jacob E. Hallbom.

SUMMARY STATEMENT.

Jacob E. Hallbom, a world war veteran, held a $10,000.00 policy of war risk insurance, his father, Peter J. Hallbom, being the named beneficiary. Insured died October 20, 1925, survived by his said father, his mother, and certain brothers and sisters. The beneficiary received the usual monthly installments until he too died, February 22, 1928. The balance of the insurance was commuted into one lump sum of $9,116, which was paid to insured's administrator, Edward Pagel, one of the respondents herein.

In his final account, the administrator proposed to use a large part of this fund to pay the claims of creditors of insured's estate. The account was allowed by the Probate Court and Selma Hallbom, insured's mother, appealed to the District Court of Kandiyohi county, Minnesota. The District Court reversed the order of the Probate Court, holding: (1) the administrator was only a trustee of the funds; (2) the money was not subject to the claims of creditors; (3) that the Probate Court should ascertain to whom the money was to be paid; and (4) that the order of the Probate Court allowing the final account was reversed.

The administrator appealed to the Supreme Court of Minnesota from this judgment, and the Supreme Court of Minnesota affirmed the District Court, the opinion being found in 179 Minn. 402, 229 N. W. 344.

The administrator applied to this Court for and was granted a writ of certiorari to review the decision of the Supreme Court of Minnesota. Pending the appeal, Selma Hallbom died, and her administrator was substituted as respondent.

On April 13, 1931, this Court filed its opinion, 283 U. S. 266, 51 S. Ct. 416, vacating the opinion and judgment of the

Supreme Court of Minnesota, and remanding the cause for further proceedings not inconsistent with the suggestion therein made, that the brothers and sisters of decedent be made parties, and that the state court pass upon the question as to whether, under the provisions of the World War Veterans Act and of the certificate of insurance, the fund should now go to the estate of the mother, to the creditors of the insured, or to the surviving brothers and sisters.

On reconsideration, the Supreme Court of Minnesota filed its supplemental opinion found in 183 Minn. 429, 237 N. W. 21, remanding the case to the District Court for further proceedings not inconsistent with its supplemental opinion. This supplemental opinion is set forth in full in the record, page . . .

The District Court, hearing the case on a stipulated set of facts (R. 25), filed its judgment, entirely reversing its former position, holding: (1) that the commuted insurance was an asset of the estate of insured, becoming such immediately upon the death of the beneficiary; (2) that said commuted insurance as an asset of the estate was subject to the claims of creditors of the insured; (3) that after payment of expenses of administration and claims of creditors, the balance, if any, should be distributed to the heirs of Jacob E. Hallbom in accordance with the intestacy laws of the state of Minnesota, such heirs to be determined as of the date of the death of Jacob E. Hallbom; and (4) affirming the order of the Probate Court allowing the final account of the administrator.

The surviving brother and sisters of insured, now parties to the action by way of interpleader, and the administrator of the estate of Selma Hallbom filed separate appeals from this judgment, the appeals being consolidated.

The Supreme Court of Minnesota, on July 11th, 1933, filed

its judgment affirming the decision of the District Court of Kandiyohi county, the decision being set forth in the record, page ...., the opinion being reported in ... Minn. ..., 249 N. W. 417.

It is this judgment which is sought to be reviewed here.

The only question involved is whether a war risk insurance estate is subject to the claims of creditors of insured after death of the insured and the named beneficiary.

REASONS RELIED ON FOR THE WRIT.

Importance of the Question Involved.

This particular question is of wide importance. There are a constantly increasing number of war risk insurance estates, the distribution of which will be materially affected by the determination of this question. The question is primarily the construction of a federal statute, and the state courts having reached contradictory results, an authoritative determination by this Court is highly desirable.

Federal Law Erroneously Construed by State Court.

The Supreme Court of the state of Minnesota, in the case at bar, has erroneously construed the provisions of the federal statutes known as the World War Veterans' Act, and has erroneously denied certain rights, privileges, and immunities claimed under the provisions of that Act.

Conflict of Decisions.

The decision of the Supreme Court of the state of Minnesota, in the case at bar, in holding such a fund subject to the claims of creditors, is contrary to and in conflict with a

number of decisions of the courts of last resort of other states, such as:

Mixon vs. Mixon (N. Car.), 166 S. E. 516.

Mason's Admr. vs. Mason's Gdn., 239 Ky. 208, 39 S. W. (2d) 211.

Hunt vs. Slagle, 165 S. E. 287.

Butler vs. Cantley, 47 S. W. (2d) 258.

Perrydore vs. Hester, 215 Ala. 268, 110 So. 403.

Wherefore, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the state of Minnesota, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket Nos. 29456-29463, *In re Estate of Jacob E. Hallbom*, decedent, and that said decree of the Supreme Court of the state of Minnesota may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem just and equitable; and your petitioners will ever pray, etc.

EBBA PAGEL, ANNIE COREY, CLARA HALLBOM AND CHARLES HALLBOM,
Petitioners.

By L. D. BARNARD,
Counsel for Petitioners.

GEO. L. BARNARD,
Of Counsel for Petitioners.

BRIEF IN SUPPORT OF PETITION.

OPINION OF THE COURT BELOW.

The opinion of the Supreme Court of the state of Minnesota is reported in Northwestern Reporter as: *In re Hallbom's Estate, Pagel vs. MacLean, et al. (McCrimmon, et al., Intervenors)*, 249 N. W. 417, and is set forth in full in the record at page ....

JURISDICTION.

The appellate and supervisory jurisdiction of the Supreme Court of the United States is invoked under Section 237, Judicial Code of the United States (28 U. S. C. A., Sec. 344), to correct error of the Supreme Court of the state of Minnesota, the court of last resort of that state, in the case cited in the last preceding paragraph.

The date of the judgment to be reviewed is July 11, 1933.

The case at bar comes within the appellate jurisdiction of this Court, under Section 237 of the Judicial Code by reason of the facts stated in the petition, not repeated here for brevity. The nature of the case, and the judgment of the court below, bring the case within the jurisdictional provision relied on because there is called into question the provisions of 38 U. S. C. A. 454, and the rights, privileges and immunities claimed by petitioners under that statute, and under the contract of insurance entered into between insured and the United States pursuant to the applicable federal statutes. The judgment of the Supreme Court of Minnesota denies the rights, privileges and immunities asserted by petitioners under the statute and under the contract of insur-

ance, namely that the insurance fund in question is not subject to the claims of insured's creditors.

Cases believed to sustain the jurisdiction are:

Singleton vs. Cheek, 284 U. S. 492.

Pagel vs. MacLean, 283 U. S. 266.

STATEMENT OF THE CASE

A statement of the facts involved is set forth in the petition, and a more detailed statement is found in the stipulation of facts in the record, page 25, and will not be repeated here in the interests of brevity.

SPECIFICATIONS OF ERROR.

1. The Supreme Court of the state of Minnesota erred in affirming the judgment of the District Court of Kandiyohi county, Minnesota.

2. The Supreme Court of the state of Minnesota erred in finding and holding that the fund in question is not exempt from the claims of creditors of insured's estate.

3. The Supreme Court of the state of Minnesota erred in finding and holding that the exemption of the fund in question, created by 38 U. S. C. A. 454, does not survive both insured and beneficiary for the benefit of the heirs of the insured.

4. The Supreme Court of Minnesota erred in finding that the issues of this case as to this question were not made *res judicata* by the decision of the court in 183 Minn. 429.

ARGUMENT.

War Risk Insurance Estates Are Not Subject to the Claims of Creditors of Insured's Estate.

It is provided by 38 U. S. C. A. 454 as follows:

> The compensation, insurance, and maintenance and support allowance payable under Parts II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Parts II, III, or IV; and shall be exempt from all taxation.

The certificate of insurance contains this provision on the back of the certificate:

> The insured may change the beneficiary without the consent of such beneficiary. This insurance is not assignable, and is not subject to the claims of creditors of insured or of the beneficiary.

The above quoted exemption statute was a part of the original War Risk Insurance Act, and has been incorporated unchanged in all amendments, and is a part of the law today.

Originally, under the regulations adopted by the War Risk Insurance Bureau pursuant to the authority and provisions of the statutes, the Bureau itself undertook to determine the distributees after the death of the named beneficiary. Bulletin No. 1, page 4, issued by the Bureau October 15, 1917, provides in part:

> If no beneficiary within the permitted class be designated by the insured, either in the insured's lifetime or by his last will and testament, or if any above designated beneficiaries are to become disqualified or does not survive the insured, the insurance (or if any above designated beneficiary shall survive the insured, but shall

> not receive all the installments, then the remaining installments) shall be payable to such person or persons within the permitted class of beneficiaries as would under the laws of the insured's last place of residence be entitled to his personal property in case of intestacy.

As far as is material here, there appears no great change in the law or in the practice as to distribution until the Act of March 4, 1925, which provides in part:

> If no person within the permitted class be designated as beneficiary for yearly renewable term insurance by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable. * * *
>
> * * * In cases when the estate of an insured would escheat under the laws of the place of his residence the insurance shall not be paid to the estate but shall escheat to the United States and be credited to the military and naval insurance appropriation.

The primary issue in this case is whether this slight amendment subjected the insurance fund to the claims of creditors of insured's estate, although other portions of the same Act provide that the fund shall not be subject to the claims of creditors.

It is the contention of petitioners that this change in the law makes the fund a part of the estate of the insured merely for the purposes of distribution to the proper parties, and that it in no way affects the status of the exemption.

In determining this question, it would seem that the primary object of Congress in creating War Risk Insurance should be kept in mind, and that the provisions of the contract of insurance and the law as a whole should be considered.

Before the adoption of the amendment, such exemption from the claims of creditors existed without question. If, as will hereafter be shown, Congress merely intended to correct certain administrative provisions of the law by this amendment, such a vital change as to wipe out the exemption should not be added by implication. Every attempt should be made to reconcile this amendment with the other provisions of the law.

The intention of Congress becomes plain by resort to the Congressional Records of the 68th Congress, Second Session. It appears that this amendment was passed without being read in the Senate, because the Senate was pressed for time. Senator Reed of Pennsylvania, a member of the committee having charge of the bill made an oral report to avoid taking the time necessary for reading the bill, and the Senate passed the bill relying on this report.

The following occurred, as appears from the Congressional Records of the 68th Congress, 2nd Session, Vol. 66, Pt. 5:

> Senator Reed: Mr. President, I ask unanimous consent for the immediate consideration of the bill (H. R. 12308) to amend the World War Veterans' Act and to add penalties for fraudulent misrepresentations in applications for the bonus. It adds nothing to the cost to the United States. It merely corrects a few inaccuracies that have been found to exist in the system adopted in the code last spring. (P. 5261).
>
> Senator Robinson said: The action of the committee in striking out that provision is not intended to deter-

mine the matter finally, but merely to hold it in suspension until it can be studied more carefully.

Senator Reed said: That is exactly the situation. The House has had three months' work on this particular bill and dropped it into our laps in the last week of the session, and we do not want to take the responsibility of passing on matters of substance at this late date, all we want to do is to correct the administrative irregularities. (P. 5261).

Senator Reed said a little later: If the Senator will permit me, I think I can present an explanation in less than 10 minutes. * * * Next is a section found on page 16, which allowed the Veterans' Bureau to pay directly to creditors of persons entitled, any compensation or amount due under $500.00. We struck it out because that would make the Veterans' Bureau practically a Probate Court and we thought that they ought not to have to do that work. (P. 5262).

Senator Walsh of Massachusetts, a member of the committee, said: Mr. President, supplementing what the Senator from Pennsylvania has said, I want to say that there are comparatively few changes in these amendments from the present law. We were very careful to omit those provisions of the House bill which seem to change the present law *so far as it applies to benefits.* We felt that at this late hour in the session *it would not be fair to make any substantial changes in existing law.* (P. 5264).

After the bill was returned to the House with the Senate changes thereon, Mr. Johnson of South Dakota, a member of the committee of the House in charge of the bill, responded to a question as to what was left of the bill as follows:

> There are some administrative provisions that will perhaps be of some benefit like the interpleader in reference to the payment of insurance. There are some other elements of the bill that will be of benefit to the men who have been guilty of what is known as wilful misconduct, but outside of those matters I think there is nothing.

From the foregoing, it is apparent that Congress merely intended to make administrative changes, by the amendment. It is also apparent that the particular change in question was intended only to obviate the difficulty of ascertaining and making payments to the proper persons by the Veterans' Bureau.

It may be noted, that since the amendment, the Veterans' Bureau has commuted the payments remaining after the designated beneficiary's death, and paid same into the estate of the insured, regardless of whether the insured died before or after the amendment.

The effect of the amendment has been before the courts in a number of cases, and in general, the courts have held in line with the construction contended for by petitioners.

Reivich vs. United States, et al., C. C. A., 25 Fed. (2d) 670.

Perrydore vs. Hester, 215 Ala. 268, 110 So. 403.

Mixon, et al., vs. Mixon, 166 S. E. 516.

Hunt, et al., vs. Slagle, 165 S. E. 287.

Sponberg vs. Lidstrom, et al., 245 N. W. 636.

Mason's Admr. vs. Mason's Gdn., 239 Ky. 208, 39 S. W. (2d) 211.

Butler vs. Cantley, 47 S. W. (2d) 258.

In *Reivich vs. United States, et al., supra*, decided after the amendment of 1925, it appears that the insured died in

1918 and the beneficiary under his will died in June, 1924. Insured's brother was advised by the Veterans' Bureau that under the laws of Iowa he was entitled to the remaining installments, and in 1925, he was further advised that "owing to the provisions of Sec. 303 of the Veterans' Act, as amended March 4, 1925 (38 U. S. C. A. 514), the remaining payments should be commuted and paid to the estate of insured." In the course of the court's opinion, the court said:

> with reference to the claim involved (the administrator was) not an administrator in the ordinary sense, but only a trustee for himself as an individual—and a naked trustee at that. Reivich, as administrator, would hold whatever he received in this case merely for the purpose of paying it over to himself, and neither the creditors of the deceased nor next of kin nor, we presume, the state, has any interest whatsoever.

In *Perrydore vs. Hester*, 215 Ala. 268, 110 So. 403, the court had particularly to construe the effect of the amendment. The court said:

> The Act of March 4, 1925, provides that in the instant circumstances the fund shall be paid in lump to the "estate of the insured." 43 Stat. 1310, Sec. 14; U. S. Comp. Stat. 1925, Sup. Sec. 9127½-303. This provision is to be construed in connection with others still remaining in the statutes unrepealed; among these, the general provision is to be construed in connection with others still remaining in the statutes unrepealed; among these, the general provision of the Act of June 7, 1924, that the repeal of certain statutes in the compilation made by that Act shall not affect any right or liability already accrued. 43 Stat. 630, Sec. 602 (U. S. Comp. St., Sec. 9127½-602).

With reference to claims already accrued as here, the Act of March 4, 1925, we think, is to be considered administrative in character.

To relieve the Veterans' Bureau of the task of ascertaining the persons entitled to take in case of intestacy under the laws of the various states, and maybe foreign countries, the fund is paid to the personal representative of the estate, to be distributed by the local jurisdiction, but in accordance to law. An analogy is presented under our law in case of damages awarded to an administrator in actions for death by wrongful act. He is a mere trustee or conduit to receive and pass on the funds to those entitled free from the debts of the decedent.

It is not intended to intimate a different view in case of death of the insured after the Act of March 4, 1925. After the soldier has carried his insurance for years, and under law made conditions that the benefit shall go to his widow and orphan without designating them beneficiaries, it will not be assumed that Congress intended such a change as would put on the soldier the active duty to name them beneficiaries without very clear and express provisions to that end.

In the recent case of *Mixon vs. Mixon* (No. Car.), 166 S. E. 516, the court said:

Therefore, nothing else appearing, the proceeds of the war risk insurance, when paid by the federal government to "the estate of the insured," would become a general asset of the estate and subject to the claims of creditors. However, the Congress of the United States had a different view, and expressed the intention of the lawmakers in the form of a statute, which is Section 454, Title 38 U. S. C. A. This statute provides that

"the insurance * * * payable under Parts II, III and IV, respectively, * * * shall not be subject to the claims of creditors of any person to whom an award is made under Parts II, III, or IV; * * * such * * * insurance * * * shall be subject to any claims which the United States may have * * * against the person on whose account the * * * is payable." Manifestly, this statute was designed to relieve the "estate of the insured" from liability for debts of the deceased soldier. See *Funk vs. Luithle*, 58 N. D. 416, 226 N. W. 595, 597; and *Whaley vs. Jones*, 152 S. C. 328, 149 S. E. 841.

Conceding that the proceeds of war risk insurance are exempt from the claims of creditors of the insured, is such fund exempt from the claims of creditors of the distributee or distributees of such fund under the intestate laws of this state?

An examination of the World War Veterans' Act and the amendments thereto will perhaps disclose that the original idea of this beneficient legislation was to provide for American soldiers and their dependents. Hence a permitted class of beneficiaries was named in the early statutes, including the closest kin of the soldier, thus confirming the view that war risk insurance, as originally conceived, was a sort of special fund to stand guard about the family of the soldier who was offering his blood upon the altar of his country. The same idea is expressed in our statute, C. S. Sec. 160, which exempts the proceeds of recovery for wrongful death from the claims of creditors. Moreover, Section 454, Title 38, U. S. C. A., is broad and comprehensive, and should doubtless be given a liberal construction in furtherance of the prevailing idea of exemption from the claims of

creditors. Furthermore, in the case at bar, the original fund or the "insurance" referred to in said Section 454, is now in the hands of the administrator. No distributee of the estate of the dead soldier has received a penny of it under the intestate laws. The entire fund is now war risk insurance in the hands of his administrator, and the exemption created by the federal statute, from the claims of creditors, still rests upon it.

In the recent case of *Hunt vs. Slagle*, 165 S. E. 287, the Court of Appeals of Georgia said:

> It follows that the proceeds of this insurance belonging to the brother of the deceased insured soldier in the hands of the administratrix of his estate was not subject to the process of garnishment issued upon a judgment obtained against his brother and that the trial court erred in rendering judgment finding said funds subject thereto.

In the recent case of *Sponberg vs. Lidstrom*, 245 N. W. 636, the Minnesota Supreme Court, considering a different, although somewhat related problem, said:

> Although, by the Act of March 4, 1925 (38 U. S. C. A. Sec. 514), the commuted amount due on the death of the designated beneficiary is payable to the estate of the insured, it bears the earmarks of an insurance fund going to the dependents of the insured under the intestacy laws of the state or his will, *free of the claims of his creditors.*

The same statute making the fund exempt from the claims of creditors also states that the fund is to be "exempt from all taxation." There is, of course, no logical distinction between subjecting such a fund to taxation and subjecting

it to the claims of creditors. The same statute is involved in both instances.

A number of cases involving the question of imposition of inheritance taxes have been before the courts, and quite uniformly they have held these funds exempt from such taxes.

In a number of these cases, the nature of the war risk insurance law, its purposes, the intentions of Congress, and the construction of the 1925 amendment, have been fully discussed.

In re Harris' Estate, 179 Minn. 450, 229 N. W. 781.
Tax Comm. vs. Rife, 119 Ohio St. 83, 162 N. E. 390.
In re Cross' Estate, 152 Wash. 459, 278 Pac. 414.
Wanzel's Estate, 295 Pa. 419, 145 A. 512.
Watkins vs. Hall, 107 W. Va. 202, 147 S. E. 876.
Succession of Geier, 155 La. 167, 99 So. 26, 32 A. L. R. 353.

We quote briefly from some of these cases.

In *Tax Comm. vs. Rife, supra*, the court said:

> It is reasonable to assume that the purpose of Congress in making the payment to the administrator of the deceased soldier was for the benefit of the Government, to relieve the Government of the necessity of selecting and determining the next of kin to whom payment should be made, and to place this burden upon the administrator appointed in the state of the soldier's residence. The administrator becomes a mere trustee or conduit for the Government to make the payments to the persons entitled to the same under the provisions of the federal law. *The intestate laws do not operate upon the decedent's property, but are referred to in order to determine who shall take the proceeds of the insurance.*

> Congress has a right to adopt the course of descent prevailing in the state of residence of the soldier, and the proceeds of the insurance therefore pass under the federal act, the intestate laws of Ohio being adopted as a standard or guide for ascertaining the next of kin to whom payment shall be made. * * *
>
> However, the proceeds of war risk insurance are a definite kind of property, differing from the ordinary property of a soldier's estate, and are in the nature of a beneficience or gratuity, bounty or pension, affecting the rights of the soldier and his dependents, upon one side, and the Government of the United States, as a part of its war policy, upon the other side. This distinct class of property, by federal enactment is not subject to the claims of creditors, or taxation, and is solely for the benefit of the soldier and his dependents and next of kin.

In *Succession of Geier*, 155 La. 167, 99 So. 26, 32 A. L. R. 353, the court said:

> The terms of the act are clear and unambiguous. Summarizing its provisions, there is a positive prohibition against all taxation on money paid out by the federal government under Section 28, Arts. 2, 3 and 4; and the insurance provision thereof is a contract between the United States, its agents, and the persons designated in the act as the beneficiaries of deceased service men. It is a bar to all state legislation which is in conflict with it.

The Supreme Court of Minnesota recently said, in the case of *In re Harris' Estate*, 179 Minn. 450, 229 N. W. 781, following its previous decision in the instant case:

> There (referring to the Hallbom case) the precise is-

> sue was whether the insurance money paid to the administrator was subject to the debts of the deceased. This court followed the Ohio, Pennsylvania, and other courts, holding that these insurance payments do not become a part of the estate of a deceased soldier or of his beneficiary; that they do not pass by the intestate laws of this state but go to the next of kin within the designated class by virtue of the contract and federal law; that the administrator is but a conduit or trustee designated to transfer the fund to those entitled thereto; that the Probate Court is appointed to determine who within the permitted class are next of kin and entitled to the fund; and that this is only a matter of procedure for the convenience of the federal government in disbursing the money.

As all of the cited cases follow nearly the same line of reasoning, in the interests of brevity, we will not discuss them further.

It is apparent from the decision of the court in the instant case, that the court took the position that all of these cases are overruled by the opinion of this Court in the case of *Singleton vs. Cheek,* decided on Feb. 5, 1932, 284 U. S. 492, 52 S. Ct. 257. In the cases of *Mixon vs. Mixon,* 166 S. E. 516, *Hunt vs. Slagle,* 165 S. E. 287, and *Sponberg vs. Lidstrom,* 245 N. W. 636, the courts either discussed the Singleton case or very plainly had it in mind. We have already cited and quoted from these cases, and do not repeat here.

It is sufficient to say that the court erroneously construes the effect of the Singleton case. In respect to the question as to the time as of which the heirs are to be determined (date of death of insured or beneficiary) the Singleton case does overrule the former decision of the Minnesota Supreme

Court in the instant case, and in this respect certain other cases which we have cited are also overruled. But we respectfully submit, that the determination of this question is the utmost limit that can be given the Singleton case. The question of exemption of the fund from claims of creditors was not in any way involved. True, the court does say that under the amendment of 1925, "the rule, which, upon the happening of the contingencies named in the prior acts, limited the benefit of the unpaid installments to persons within the designated class of permittees, was abandoned, and 'the estate of the insured' was wholly substituted as the payee. All installments, whether accruing before the death of the insured or after the death of the beneficiary named in the certificate of insurance, as a result, became assets of the estate of the insured as of the instant of his death, *to be distributed to the heirs of the insured* in accordance with the intestacy laws of the state of his residence * * *." We respectfully submit that there is nothing in this language which would abrogate the effect of the exemption statute. In fact, the italicized portion would seem to indicate that the fund is paid to the estate of the insured for one special purpose—to be paid to his proper heirs. The protection of the exemption statute still remains. We do not feel that this Court, in the Singleton case, where the question was not even indirectly involved, undertook to pass upon the effect of the amendment as it affects the exemption law.

In fact, just as the Minnesota Supreme Court said in *Sponberg vs. Lidstrom*, 245 N. W. 636, with the Singleton case fully in mind:

> Although by the Act of March 4, 1925 (38 U. S. C. A., 514), the commuted amount due on the death of the

> designated beneficiary is payable to the estate of the insured, it bears the earmarks of an insurance fund going to the dependents of the insured under the intestacy law of the state or his will, free of the claims of his creditors.

There is nothing in such a construction in any way in conflict with *Singleton vs. Cheek*.

It may be said that petitioners are not directly dependents of the insured in this case. However that may be, the rule cannot be different on this account. Consider the case of an insured leaving a widow and children, with the widow as the named beneficiary. It could never have been the intention of Congress that the creditors of the insured, after the death of the widow, were to have the insurance before his minor dependent children. Or consider the case of a dependent father and mother, with either as the named beneficiary. Can it be said that the creditors should have this fund before the survivor?

Carrying these illustrations a bit farther, let us suppose that in either case the insured died prior to the enactment of the amendment, the named beneficiary after. Then we would have the peculiar situation where at the time of his death the soldier would know that his insurance would go to protect the named beneficiary until his or her death, and then to his next dependents in the order of descent under the intestacy laws, but, because of this slight change in the laws, enacted after his death, the creditors would be preferred to his dependents. Such a construction is clearly in violent conflict with the expressed purpose of the law "to give to every commissioned officer and enlisted man greater protection for themselves and their dependents," and is clearly against the intentions of Congress. Yet such must be the

construction placed upon the law if the decision of the Minnesota Supreme Court is to be sustained.

It is necessary to consider not only the amendment of 1925, but the entire statute, the intention of Congress, and the other elements involved to arrive at the right conclusion. As was said in *Caha vs. United States*, 152 U. S. 211, 14 Sup. Ct. 513: "In arriving at a proper decision, this court may therefore turn for assistance, not only to the certificate of insurance, but also to the application for insurance, and the rules and regulations of the department, as well as the act itself * * *."

When this is done, it is clear that the protection of the federal exemption statute rests upon this fund, not only before the death of the beneficiary, but until it is entirely distributed to its rightful distributees.

THE QUESTION AS TO CLAIMS OF CREDITORS WAS RES JUDICATA IN THIS CASE, AND THE COURT ERRED IN ATTEMPTING TO RECONSIDER IT.

When this case was remanded by this Court to the Supreme Court of Minnesota for further proceedings, this question was expressly left open. This Court said:

> By reason of her decease, the question whether the mother alone of the permitted class is entitled to receive the proceeds of the insurance, in preference to the creditors of the insured, presented by the record and decided by the state court, has now become subsidiary to other questions, the determination of which is necessary to the disposition of the present suit and may render unnecessary any adjudication of the rights of the mother. Assuming, as the state court held, that the mother was entitled to the insurance in her lifetime, it does not fol-

low that respondent, by virtue of his office as administrator, or claiming in the mother's right, is entitled to payment of the insurance under the judgment in her favor. That depends on the construction of page 300, directing that the insurance "shall be payable only" to members of the permitted class, and on the question whether, under the provisions of the act and of the certificate, the insurance should now go to the estate of the mother, to the creditors of the insured, or to the surviving brothers and sisters, if any, none of whom is a party to this suit.

The question thus being left open, the Minnesota Supreme Court then proceeded to determine it. In its supplemental opinion, filed May 29, 1931, after the remand, the court said, after quoting the opinion of this Court as above:

> Upon reconsideration we adhere to and reaffirm our prior holding so far as the questions contained therein may be important or applicable; but we remand the cause to the trial court with the suggestion that the brothers and sisters of the soldier, if any, be made parties, and that the court pass upon the question as to whether such brothers and sisters or the administrator of the mother's estate are now entitled to the money involved.

The court not only expressly reaffirmed its former decision on this question of claims of creditors (it being the only other question important or applicable) but expressly limited the trial court to the determination of a specific question.

This decision, found in 183 Minn. 429, 237 N. W. 21, was not appealed from in any way. It became a final judgment accordingly. By it, everything held by the court in its

former opinion in 179 Minn. 402, in so far as applicable became the law of the case.

It was not, as contended by respondents before the Supreme Court of Minnesota, the judgment of an intermediate appellate court, because it became final upon a question specifically submitted to it.

The case of *American Surety Company vs. Baldwin* (U. S.), 77 L. Ed. 125, seems to be very clearly in point and quite conclusive. The judgment of the court as reported in 183 Minn. 429 became final and binding, not only upon the District Court but upon the Supreme Court of Minnesota as well. The question should not have been again considered.

CONCLUSION.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory power in order that the decision of the Minnesota Supreme Court may be made to conform to the decisions herein quoted and in order that your decision in this case may become a guide for the Supreme Courts of all the states in the United States and thereby establish uniformity of decisions throughout the United States on the point and question involved, and that to such an end a writ of certiorari should be granted and this Court should review the decision of the Supreme Court of the state of Minnesota and finally reverse it.

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FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1933.

No. 526.

EBBA PAGEL, ANNIE COREY, CLARA HALLBOM AND CHARLES HALLBOM, *Petitioners,*

vs.

EDWARD PAGEL, AS ADMINISTRATOR OF THE ESTATE OF JACOB E. HALLBOM; JOHN G. MACLEAN, AS ADMINISTRATOR OF THE ESTATE OF SELMA HALLBOM; LILLIE F. MCCRIMMON, AS ADMINISTRATRIX OF THE ESTATE OF FRED R. HALLBOM; LILLIE F. MCCRIMMON, AS GUARDIAN OF FRED R. HALLBOM, JR.; ARLYENE ALINDER AND LILLIAN GABRIELSON, *Respondents.*

BRIEF FOR RESPONDENTS (BELOW NAMED) IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

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Hayward Brief Co., 501-7 Fourth Ave. So., Minneapolis

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Supreme Court of the United States

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Respondents.

BRIEF FOR RESPONDENTS (APPEARING) IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

ARGUMENT.

The petitioners in support of their petition for a writ of certiorari make four specifications of error enumerated on page 7 of their brief.

The first specification is general in its nature and will stand or fall with the remaining three. That is, unless one or more of the remaining specifications is sustained the first must necessarily fall with the rest.

The second and third specifications raise the question whether or not funds consisting of the commuted value of

War Risk Insurance in the hands of the administrator of a deceased soldier's estate, as in the case at bar, are subject to application for payment of claims allowed against the estate of the deceased soldier, so far as necessary, before distribution to the heirs at law of the deceased soldier.

The petitioners in their argument against the subjection of said funds to the payment of claims rely entirely upon the so-called Exemption Statute, 38 U. S. C. A. 454, cited in the third specification and set out verbatim in part on page 8 of their brief. Therefore, in considering the question of the payment of claims the field is limited to a discussion of the third specification.

PAYMENT OF CLAIMS.

The petitioners admit that the Minnesota Supreme Court correctly held that the fund in question became a general asset of the estate of the deceased soldier and admit that in that regard the Minnesota Supreme Court properly followed the law as enunciated by this Court in the case of *Singleton vs. Cheek,* cited and quoted on page 62 of the record. They contend, however, that the Exemption Statute, 38 U. S. C. A. 454, hereinbefore referred to, is applicable and prohibits the payment of any claims allowed against the estate of the deceased soldier before distribution of the residue to the soldier's heirs at law.

The respondents are of the opinion that this contention no longer raises a substantial federal question. This Court, in its decision in the case of *Spicer vs. Smith,* 53 S. Ct. 415, has enunciated the limitations applicable to the exemption statute in question. By that decision this Court established the rule of law, as pointed out by the Minnesota Supreme Court in the case at bar, page 63 of the record, that Section 454 of

Title 38, U. S. C. A., has no application to moneys which have been paid under the War Risk Insurance Act to the guardian of an incompetent soldier. It would, therefore, seem to logically follow that said section cannot have any application to moneys paid under the War Risk Insurance Act to the administrator of the estate of a deceased soldier, for distribution under the intestacy laws of the state of the soldier's residence.

If it is correct that the exemption statute referred to is inapplicable, then there remains nothing to support petitioners' claim that the Minnesota Supreme Court erred in holding that the fund in question was subject to payment of claims allowed against the estate of the deceased soldier before distribution of the residue to the insured's heirs at law.

The Minnesota Supreme Court after considering the decision of this Court in the *Singleton vs. Cheek* case, *Spicer vs. Smith,* and this case (*Pagel as Adm'r vs. MacLean as Adm'r,* 283 U. S. 266, 75 L. Ed. 1023), reached the conclusion that it was required to hold, at least by implication, from those decisions that the fund in question is available for the payment of claims of the creditors of the deceased soldier, page 63 of the record.

The Circuit Court of Appeals for California in the case of *Brown vs. United States,* 65 F. (2d) 65, after considering this Court's decision in the *Singleton vs. Cheek* case, *supra,* reached the conclusion that under said decision in the *Singleton vs. Cheek* case the payment of expenses of administration and debts allowed against the insured's estate, if any, is a prerequisite to distribution of the residue.

The facts in the *Brown vs. United States* case show that Oliver Winfield entered the United States Army in June, 1918, and in September of that year he died in France. His

$10,000.00 War Risk Insurance policy named his *estate* as beneficiary.

A nuncupative will was admitted to probate in Inyo county, California, which provided "all of his property and money" which was "of the value of not exceeding $100.00" should go to Brown (Adm'r) and the latter's wife. The will was uttered in February, 1918, and reduced to writing in November, 1926.

The California statutes provided that the estate bequeathed in a nuncupative will must not exceed $1,000.00 in value.

The United States (appellee) contended that as the insurance could not be made payable to anyone not within the class of permissible beneficiaries specified in the Act of May 29, 1928, Chap. 875 (38 U. S. C. A. 511), it necessarily follows that this result cannot be accomplished indirectly.

The Circuit Court cites from the *Singleton vs. Cheek* case, *supra*, the following:

> "By that amendment, the rule, which, upon the happening of the contingencies named in the prior acts, limited the benefit of the unpaid installments to persons within the designated class of permittees, was abandoned, and 'the estate of the insured' was wholly substituted as the payee."

The Circuit Court then in the course of its opinion says:

> "This statement clearly indicates that any of the insurance money that thus becomes payable to his estate must be distributed as his general estate is distributed, and therefore the statutory provisions as to the class of persons who could be directly named in the policy itself as beneficiaries do not affect the distribution, if and when the insurance becomes payable in whole or in part to the 'estate of the insured'."

(Footnote): "For the same reason, administration expenses and debts of the insured's estate would be payable, if necessary, out of the insurance money paid to the estate. *Whaley vs. Jones,* 152 S. C. 328, 149 S. E. 841 (1929), and other cases cited, 284 U. S. 497-498, Note 3, 52 S. Ct. 257-259, * * * as 'in accord with the text.' Contra *Mason's Adm'r vs. Mason's Guardian,* 239 Ky. 208, 39 S. W. (2d) 211 (1931)."

"There would seem to be no distinction in this respect whether the insured died intestate or testate. This result was reached where the insured died testate, in *In re Young's Estate* (Cal. App. 1931), 1 P. (2d) 523, and *Ogilvie's Estate,* 291 Pa. 326 (1927), cited in Note 3, page 497 of 284 U. S., 52 S. Ct. 257, 259, in the Singleton case, as in accord with the text."

The Court continues:

"The uncontroverted finding of the District Court was that decedent had no relatives; any property not effectively bequeathed by the will would therefore escheat. *Calif. Civ. Code,* §1386. Under the statute, the United States is not obligated to pay the insurance to the administrator and then to come into the Probate Court and reclaim it because of the escheat. If it 'would escheat,' it 'shall not be paid.' In other words, escheat is a defense to payment of the obligation originally incurred or perhaps more accurately, a limitation or condition subsequent inherent in the obligation itself."

The Court then holds that statute is *pro tanto* applicable in case part only of the estate would escheat, and continued:

"But, before distribution, administration expenses and claims allowed against the estate must be paid. The balance only would escheat. The obligation of the gov-

ernment, therefore, is measured by the $1,000.00 for the legacy plus the sum required for the claims allowed and the administration costs, less the value of any other property in the estate."

The cases cited by petitioners on pages 5 and 12 of their brief as being in conflict with the decision of the Minnesota Supreme Court in the instant case and as holding in line with the conclusion contended for by the petitioners were decided prior to the handing down of the decisions in either the *Singleton vs. Cheek* or the *Spicer vs. Smith* cases, or both, and therefore, the Courts in said cited cases did not have an opportunity to be guided by the legal constructions of the statutes in question and rules of law found in those cases. It may be interesting as well as enlightening to examine the cases so cited.

The case of *Mixon vs. Mixon* was decided prior to the *Spicer vs. Smith* and involved the question of whether or not the administrator of the soldier's estate should apply funds, such as those in question in this case, in the payment of claims against the distributees before making such distribution. The Court held that the funds were not subject to such application before distribution. That holding would seem logical because regardless of whether or not the funds in the administrator's hands were War Risk Insurance funds or other assets the same would not be applied in the payment of claims against distributees in the course of the administration unless done through some other legal proceeding.

It is a question if that Court would have enunciated its reasoning relative to Section 454, *Title 38*, U. S. C. A., found in its opinion, if the *Spicer vs. Smith* case had been decided by this Court at that time.

The case of *Mason's Adm'r vs. Mason's Guardian* was decided prior to the *Singleton vs. Cheek* case and the *Spicer vs. Smith* case and did not involve the payment of claims of creditors against the soldier's estate and whatever was said by the Court relative to the funds not being subject to the soldier's debts was merely a matter of dictum and had no bearing on the final decision of the Court in that case.

While the *Hunt vs. Slagle* case was decided a short time after the *Singleton vs. Cheek* case, no reference is made in the opinion to the latter case and therefore it must be presumed that the same had not been called to the Court's attention before its decision was made, particularly because it cites favorable the Hallbom and other cases discredited by this Court in the *Singleton vs. Cheek* case and based its decision, which did not involve the payment of claims against the deceased soldier, upon theories contrary to those enunciated by this Court in the *Singleton vs. Cheek* case.

The *Butler vs. Cantley* case involved the matter of preference of War Risk Insurance funds in the hands of an administrator in a closed bank.

While this case was decided after the *Singleton vs. Cheek* case there is no reference made in the opinion thereto and it must be assumed that when the Court made its decision it had no knowledge concerning the same.

That case was decided contrary to the later holding of this Court in the *Spicer vs. Smith* case and the presumption is that the Court would have decided differently if it had been passing on the same question later with the *Spicer vs. Smith* case decision before it.

The case of *Perrydore vs. Hester* was decided November 18, 1926, and was limited to a case involving funds accruing prior to the Act of March 4, 1925, and, of course, the Court

in that case was far removed from the guidance of the *Singleton vs. Cheek* and the *Spicer vs. Smith* cases.

The *Sponberg vs. Lidstrom* case was decided by the Minnesota Supreme Court prior to the case at bar and therefore is of no value in so far as it may be conflicting with that Court's decision in the case at bar.

The case of *Reivich vs. United States* was decided a long time prior to the *Singleton vs. Cheek* and the *Spicer vs. Smith* decisions and therefore cannot be any guide as to what interpretation that Court would make relative to the payment of claims in a case similar to that at bar with those decisions before it.

RES JUDICATA.

The petitioners in the fourth specification of error raises the claim of *res judicata,* but the Minnesota Supreme Court in its decision in the instant case, pages 60 and 61 of the record, discusses very fully why its former decision in this case could not be invoked as *res judicata,* also why the principle of the "law of the case" would not apply and cites numerous authorities for so holding. In fact that issue is thoroughly briefed by the Minnesota Supreme Court in its decision and for that reason respondents will refrain, in the interest of brevity, from further burdening the Court with discussions bearing on the fourth specification of error, except to call the Court's attention to the following found in *R. C. L.,* Vol. 1, Perm. Supp. on page 393 under subdivision 11 of paragraph 187, APPEALS AND ERRORS, to-wit:

> "Decision of Intermediate Court.—A principle of law laid down by an intermediate appellate court on an appeal is not binding on that court, on a second appeal, where the highest appellate court has, since the first

appeal, and in another case, decided the precise question contrary to the rule announced upon the first appeal, and a decision of an intermediate appellate court, which has been reversed or modified on appeal, and held for naught, is not binding upon it, upon a subsequent appeal of the same case, as to any point decided upon the first appeal. 1 *A. L. R* 1275, note."

CONCLUSIONS.

The appearing respondents are impressed with a conviction that in view of the decisions by this Court in the cases of *Singleton vs. Cheek, supra,* and *Spicer vs. Smith, supra,* and the statement of issues involved in this case on the former appeal, *Pagel vs. MacLean,* 283 U. S. 266, 51 S. Ct. 416, 75 L. Ed. 1023, the petition for writ of certiorari in the case at bar does not present a substantial federal question, but if after consideration your Honorable Court concludes that the matter presented should be heard and determined, your respondents earnestly contend that the decision of the Minnesota Supreme Court is correct, in accordance with law and should be sustained.

Respectfully submitted,

CHAS A. SWENSON,
Atwater, Minnesota,
Counsel for Respondents, Edward A. Pagel, Administrator; Lillie F. McCrimmon, Administratrix and Guardian; Arlyene Alinder and Lillian Gabrielson.

SUPREME COURT OF THE UNITED STATES.

No. 526.—October Term, 1933.

Ebba Pagel, Annie Corey, Clara Hallbom, and Charles Hallbom, Petitioners,
vs.
Edward Pagel, as Administrator of the Estate of Jacob E. Hallbom, et al.

On Writ of Certiorari to the Supreme Court of the State of Minnesota.

[March 5, 1934.]

Mr. Justice Butler delivered the opinion of the Court.

This case presents the question whether war risk insurance money paid to the estate of an insured soldier is exempt from the claims of his creditors. Title 38, U. S. Code, contains the applicable statutes. They are: § 454: "The . . . insurance . . . shall not be subject to the claims of creditors of any person to whom an award is made"; § 511: "In order to give to every commissioned officer and enlisted man . . . protection for themselves and their dependents, the United States . . . shall grant . . . life insurance . . . payable only to a spouse, child, grandchild, parent, brother, sister, uncle, aunt, nephew, niece, brother-in-law, or sister-in-law, or to any or all of them"; § 514: " . . . If the designated beneficiary . . . survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable".

Jacob E. Hallbom, the insured soldier, obtained a ten thousand dollar policy and designated as beneficiary his father, Peter J. Hallbom. He died intestate October 20, 1925, leaving no spouse or child. He was survived by his father and others within the permitted class of beneficiaries. Thereupon, until the death of the father, February 22, 1928, the Bureau paid him the monthly installments according to the terms of the policy. He was survived by his wife, a son, a widow and child of a deceased son (who died after the death of the insured), daughters, and children of a de-

ceased daughter. They were mother, brother, sisters, sister-in-law, nephews and nieces of the insured.

The Bureau paid Pagel, administrator of the estate of the insured, $9,116, being the value of the installments payable after the death of the designated beneficiary. The other assets in his hands were not sufficient to pay expenses of administration or the claims of creditors which amounted to about $3,800. The probate court directed payment of such claims. The mother, Selma Hallbom, claiming under the War Risk Insurance Act to be entitled to the entire sum as beneficiary, appealed to the district court which reversed the order of the probate court. The state supreme court affirmed. 179 Minn. 402. It held the money not subject to claims of creditors, that upon the death of the designated beneficiary the value of the unpaid installments became payable to the estate of the insured for distribution to such persons then living and within the permitted class of beneficiaries, § 511, as would be entitled to the personal property of the insured under Minnesota intestacy laws, and that such persons were entitled as beneficiaries and not as heirs.

Pending the application of the administrator for a writ of certiorari, the mother died and, after the granting of the writ, 282 U. S. 819, MacLean, who had been appointed special administrator of her estate, was here substituted as respondent. Her death having given rise to questions involving the rights of persons who were not parties, we vacated the judgment and remanded the case for further proceedings. 283 U. S. 266. The state supreme court remanded to the district court with the suggestion that the brothers and sisters of the insured be made parties. 183 Minn. 429.

The surviving brother and sisters appeared and claimed the insurance money as beneficiaries. The administrator of the deceased brother intervened as a creditor and prayed that his claim be paid out of the insurance money. The children of the deceased son and daughter became parties and prayed that, after payment of claims against the estate of the insured, the residue be distributed to the father and mother. The court held that, upon the death of the designated beneficiary, the insurance money became an asset of the estate of the insured and subject to the claims of creditors. It directed that the balance be distributed to the heirs in accordance with state law, and that heirship be determined as

of the date of the death of the insured. The surviving brother and sisters and the special administrator of the mother appealed to the supreme court. That court, in view of *Singleton* v. *Cheek*, 284 U. S. 493, held its former decision erroneous and affirmed the judgment of the district court. — Minn. —. We granted a writ of certiorari. 290 U. S. —.*

In *Singleton* v. *Cheek*, *supra*, 496, we held that, when the insured and designated beneficiary die successively intestate, the commuted amount of the installments not accrued when the beneficiary dies is to be paid to the estate of the insured for distribution to his heirs and that the heirs are to be determined as of the time of his death in accordance with the laws of the state where he resided and are not limited to the class of beneficiaries designated by the Act. The question whether insurance money paid to the estate is subject to claims of creditors was not involved in that case. The purpose of the exemption, § 454, is to safeguard to the insured soldier and the beneficiary payments made under the policy to them or for their benefit. *Spicer* v. *Smith*, 288 U. S. 430, 434. Upon the death of the insured, the father whom he had designated as beneficiary was by the Bureau awarded monthly payments to continue until death. The language of the statute limits the exemption to "any person to whom an award is made." It is clear that the statute does not extend the exemption beyond the insured and beneficiary. And, as said by the state supreme court after referring to our decision in *Singleton* v. *Cheek*, "it cannot be held now that exemption of the fund survives both insured and beneficiary for benefit of the heirs of the former." — Minn. —, —.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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*There is a conflict between decisions announced since our decision in Singleton *v.* Cheek (February 15, 1932), 284 U. S. 493. Hunt *v.* Slagle (July 29, 1932), 45 Ga. App. 470, holds in favor of the exemption. There is dictum to the same effect in Mixon *v.* Mixon (November 23, 1932), 203 N. C. 566. And see Brown *v.* United States (May 9, 1933), 65 F. (2d) 65.